



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 02 अगस्त, 2023 / 11 श्रावण, 1945

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated the 6th May, 2023

No. Shram (A) 3-2/2023 (Awards) L.C. Shimla.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor of Himachal Pradesh is pleased to

order the publication of awards of the following cases announced by the Presiding Judge, Labour Court, Shimla on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* “e-Gazette” :—

Sl. No.	Case No	Petitioner	Respondent	Date of Award/Order
1.	Ref. 197/2022	Sh.Rupinder Singh	M/s Ruchira Paper Mill, Kala-Amb.	01-03-2023
2.	Ref. 27/2021	Smt. Gurmeet Kaur	M/s Penguin Electronics Ltd.	01-03-2023
3.	Ref. 28/2021	Smt. Rita Devi	M/s Penguin Electronics Ltd.	01-03-2023
4.	Ref. 29/2021	Smt. Seema Devi	M/s Penguin Electronics Ltd.	01-03-2023
5.	Ref. 30/2021	Smt. Shakuntla	M/s Penguin Electronics Ltd.	01-03-2023
6.	Ref. 32/2021	Sh. Ajay Kumar	M/s Penguin Electronics Ltd.	01-03-2023
7.	Ref. 33/2021	Sh. Balbir Singh	M/s Penguin Electronics Ltd.	01-03-2023
8.	Ref. 34/2021	Smt. Surjeet Kaur	M/s Penguin Electronics Ltd.	01-03-2023
9.	Ref. 36/2021	Sh. Karam Chand	M/s Penguin Electronics Ltd.	01-03-2023
10.	Ref. 38/2021	Smt. Sunita Rani	M/s Penguin Electronics Ltd.	01-03-2023
11.	Ref. 39/2021	Sh. Dharampal	M/s Penguin Electronics Ltd.	01-03-2023
12.	Ref. 40/2021	Sh. Mohinder Singh	M/s Penguin Electronics Ltd.	01-03-2023
13.	Ref. 64/2021	Smt. Ranju Devi	M/s Penguin Electronics Ltd.	01-03-2023
14.	Ref. 65/2021	Smt. Gurpreet Kaur	M/s Penguin Electronics Ltd.	01-03-2023
15.	Ref. 66/2021	Smt. Lakshmi Devi	M/s Penguin Electronics Ltd.	01-03-2023
16.	Ref. 68/2021	Smt. Karamjeet Kaur	M/s Penguin Electronics Ltd.	01-03-2023
17.	Ref. 69/2021	‘Smt. Jasvir Kaur	M/s Penguin Electronics Ltd.	01-03-2023
18.	Ref. 70/2021	Sh. Jasbinder Singh	M/s Penguin Electronics Ltd.	01-03-2023
19.	Ref. 71/2021	Ms. Manju	M/s Penguin Electronics Ltd.	01-03-2023
20.	Ref. 74/2021	Sh. Khairat Singh	M/s Penguin Electronics Ltd.	01-03-2023
21.	Ref. 76/2021	Sh. Vasudev	M/s Penguin Electronics Ltd.	01-03-2023
22.	Ref. 77/2021	Sh. Balwant Singh	M/s Penguin Electronics Ltd.	01-03-2023
23.	Ref. 78/2021	Sh. Parveen Malik	M/s Penguin Electronics Ltd.	01-03-2023
24.	Ref. 79/2021	Sh. Sawroop Singh	M/s Penguin Electronics Ltd.	01-03-2023
25.	Ref. 84/2021	Sh. Narender Kumar	M/s Penguin Electronics Ltd.	01-03-2023
26.	Ref. 85/2021	Sh. Salinder Kumar	M/s Penguin Electronics Ltd.	01-03-2023
27.	Ref. 88/2021	Sh. Raj Kumar	M/s Penguin Electronics Ltd.	01-03-2023
28.	Ref. 89/2021	Sh. Subhash Kaushal	M/s Penguin Electronics Ltd.	01-03-2023
29.	Ref. 91/2021	Sh. Namdan	M/s Penguin Electronics Ltd.	01-03-2023
30.	Ref. 92/2021	Sh. Hariom	M/s Penguin Electronics Ltd.	01-03-2023

31.	Ref. 94/2021	Sh. Anil Kumar	M/s Penguin Electronics Ltd.	01-03-2023
32.	Ref. 95/2021	Sh. Vivek Kumar	M/s Penguin Electronics Ltd.	01-03-2023
33.	Ref. 96/2021	Sh. Amarjeet	M/s Penguin Electronics Ltd.	01-03-2023
34.	Ref. 97/2021	Sh. Gurvinder Singh	M/s Penguin Electronics Ltd.	01-03-2023
35.	Ref. 106/2021	Smt. Parvati	M/s Penguin Electronics Ltd.	01-03-2023
36.	Ref. 107/2021	Sh. Sangat Singh	M/s Penguin Electronics Ltd.	01-03-2023
37.	Ref. 108/2021	Sh. Kulwant Singh	M/s Penguin Electronics Ltd.	01-03-2023
38.	Ref. 109/2021	Sh. Aman	M/s Penguin Electronics Ltd.	01-03-2023
39.	Ref. 167/2021	Sh. Mohan Singh	M/s Penguin Electronics Ltd.	01-03-2023
40.	Ref. 170/2021	Sh. Avtar Singh	M/s Penguin Electronics Ltd.	01-03-2023
41.	Ref. 172/2021	Sh. Rajeev Kumar	M/s Penguin Electronics Ltd.	01-03-2023
42.	Ref. 173/2021	Smt. Anita Kaur	M/s Penguin Electronics Ltd.	01-03-2023
43.	Ref. 174/2021	Smt. Sonal Devi	M/s Penguin Electronics Ltd.	01-03-2023
44.	Ref. 175/2021	Sh. Ami Samal	M/s Penguin Electronics Ltd.	01-03-2023
45.	Ref. 178/2021	Sh. Deepak Raj	M/s Penguin Electronics Ltd.	01-03-2023
46.	Ref. 179/2021	Ms. Kanta Devi	M/s Penguin Electronics Ltd.	01-03-2023
47.	Ref. 212/2021	Sh. Swaran Singh	M/s Penguin Electronics Ltd.	01-03-2023
48.	Ref. 214/2021	Sh. Tirath Singh	M/s Penguin Electronics Ltd.	01-03-2023
49.	Ref. 217/2021	Sh. Sandeep Kumar	M/s Penguin Electronics Ltd.	01-03-2023
50.	Ref. 220/2021	Sh. Jaswant Singh	M/s Penguin Electronics Ltd.	01-03-2023
51.	Ref. 221/2021	Sh. Gurusevak Singh	M/s Penguin Electronics Ltd.	01-03-2023
52.	Ref. 223/2021	Smt. Melo Devi	M/s Penguin Electronics Ltd.	01-03-2023
53.	Ref. 225/2021	Sh. Lakshman Ram	M/s Penguin Electronics Ltd.	01-03-2023
54.	Ref. 226/2021	Sh. Hardev Singh	M/s Penguin Electronics Ltd.	01-03-2023
55.	Ref. 228/2021	Smt. Usha Devi	M/s Penguin Electronics Ltd.	01-03-2023
56.	Ref. 232/2021	Smt. Vineeta Pal	M/s Penguin Electronics Ltd.	01-03-2023
57.	Ref. 233/2021	Smt. Saroj Kumari	M/s Penguin Electronics Ltd.	01-03-2023
58.	Ref. 234/2021	Sh. Harvinder Kumar	M/s Penguin Electronics Ltd.	01-03-2023
59.	Ref. 236/2021	Smt. Ranju Lata Samal	M/s Penguin Electronics Ltd.	01-03-2023
60.	Ref. 238/2021	Sh. Hussan Deep	M/s Penguin Electronics Ltd.	01-03-2023
61.	Ref. 240/2021	Sh. Lal Singh	M/s Penguin Electronics Ltd.	01-03-2023
62.	Ref. 242/2021	Sh. Ishwar Kumar	M/s Penguin Electronics Ltd.	01-03-2023
63.	Ref. 244/2021	Ms. Bhagwati	M/s Penguin Electronics Ltd.	01-03-2023
64.	Ref. 245/2021	Smt. Baby Devi	M/s Penguin Electronics Ltd.	01-03-2023
65.	App.245/2021	Sh. Joginder Singh	M/s Penguin Electronics Ltd.	01-03-2023

66.	Ref. 249/2021	Sh. Labh Singh	M/s Penguin Electronics Ltd.	01-03-2023
67.	Ref. 250/2021	Sh. Naresh Kumar	M/s Penguin Electronics Ltd.	01-03-2023
68.	Ref. 251/2021	Sh. Ajit Singh	M/s Penguin Electronics Ltd.	01-03-2023
69.	Ref. 252/2021	Sh. Dhiraj Kumar	M/s Penguin Electronics Ltd.	01-03-2023
70.	Ref. 254/2021	Sh. Pradeep Kumar	M/s Penguin Electronics Ltd.	01-03-2023
71.	Ref. 273/2021	Smt. Samina	M/s Penguin Electronics Ltd.	01-03-2023
72.	Ref. 276/2021	Smt. Ram Kumari	M/s Penguin Electronics Ltd.	01-03-2023
73.	Ref. 278/2021	Sh. Jasbir Singh	M/s Penguin Electronics Ltd.	01-03-2023
74.	Ref. 279/2021	Smt. Avdesh Kaur	M/s Penguin Electronics Ltd.	01-03-2023
75.	Ref. 280/2021	Sh. Davinder Kumar	M/s Penguin Electronics Ltd.	01-03-2023
76.	Ref. 281/2021	Smt. Neelam Devi	M/s Penguin Electronics Ltd.	01-03-2023
77.	Ref. 283/2021	Smt. Gulzaro	M/s Penguin Electronics Ltd.	01-03-2023

By order,

AKSHAY SOOD,
Secretary (Lab. & Emp.).

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 197 of 2022

Instituted on : 05-12-2022

Decided on : 01-03-2023

Rupinder Singh s/o Late Shri jai Dev Singh, r/o Mohalla Chekreda, Nahan, District Sirmour, (H.P.)

VERSUS

The Occupier/Factory Manager, M/s Ruchira Paper Mill, Kala Amb, Trilokpur, District Sirmaur, H.P. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Veerdaman Singh, Advocate

For respondent : Shri Sanjay Pandit, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 04.11.2022, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication:

“Whether the demand of Shri Rupinder Singh s/o late Shri jai Dev Singh, r/o Mohalla Chekreda, Nahan, District Sirmour, H.P. for his re-instatement in service before the management of M/s Ruchira Paper Mill, Kala Amb, Trilokpur, District Sirmaur, H.P. after receiving full & final amount is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management and if not, its effect?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Veerdaman Singh, Advocate has appeared on behalf of the petitioner whereas Shri Sanjay Pandit, Advocate had appeared for respondent.

3. To the fore Shri Rupinder Singh petitioner has stated that the demand raised by him *vide* demand notice regarding the re-instatement in service before the management of respondent after receiving full and final amount, has been referred to this Court as industrial dispute *vide* notification dated 4.11.2022. The said industrial dispute has been amicably resolved and settled between the parties as a result of which the respondent had agreed to pay lump-sum compensation of ₹60,000/- (Sixty Thousand). Out of which Rs. 50,000/- has been paid through cheque No. 189699 dated 19.01.2023 and remaining amount of Rs. 10,000/- has been paid to him in cash today in the Court and now nothing survive in the present reference petition. He has also placed on record copy of cheque (PA), copy of driving licence (PB), copy of Aadhar card (PD), copy of ESI card (PE), and copy of PAN card (PF). To this effect his statement recorded separately and placed on record.

4. *Vide* separate statement Rakesh Kumar, AGM of the respondent company has stated that the industrial dispute received from the government *vide* reference No. 197 of 2022 has been amicably settled between the parties to which the petitioner has been paid full and final settlement amount of ₹60,000/- (Sixty Thousand) out of which Rs. 50,000/- has been paid through cheque and Rs. 10,000/- has been paid in cash today in the Court. The statement made by the petitioner is acceptable to him. He has placed on record the copy of identity proof (PC).

5. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of **₹60,000/- (Sixty Thousand) out of which Rs. 50,000/- has been paid through cheque No. 189699** dated 19.01.2023 and remaining amount of **Rs. 10,000/- has been paid to him in cash** as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference No. 197 of 2022, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying ₹60,000/- (Sixty Thousand).** The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record *i.e.* copy of cheque (PA), copy of driving licence (PB), copy of identity proof (PC), copy of Aadhar card (PD), copy of ESI card (PE), and copy of PAN card (PF), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced :
01-03-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 27 of 2021

Instituted on : 17-02-2021

Decided on : 01-03-2023

Gurmeet Kaur w/o Shri Sant Ram, r/o Village Plassi, P.O. Plass Kalan, Tehsil Nalagarh,
District Solan, H.P. . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 01.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Gurmeet Kaur w/o Shri Sant Ram, r/o Village Plassi, P.O. Plass Kalan, Tehsil Nalagarh, District Solan, H.P., for her reinstatement in service before the management i.e. the Occupier/Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947

between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 20.07.2009 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner/claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company *i.e.* M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company

found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide zimni* order dated 17.09.2021, which reads as under:

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue No.1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants *i.e.* M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respodnent,

hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories *i.e.* Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected inter se the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then when the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company *i.e.* M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner *i.e.* M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner *vide* separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent *i.e.* M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, *vide* separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष

कामगार पक्ष

- | | |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैकट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैकट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैकट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

- | | |
|---------------------|----------------|
| प्रबंधन पक्ष | कामगार पक्ष |
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]

(3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--

- (a) all parties to the industrial dispute;**
- (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have

carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence *i.e.* resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as **Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470**, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in

its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/ petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present

form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 28 of 2021

Instituted on : 17-02-2021

Decided on : 01-03-2023

Rita Devi w/o Shri Rajinder Kumar, r/o Village Mussewal, P.O. Rajpura, Tehsil Nalagarh,
District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 01.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Rita Devi w/o Shri Rajinder Kumar, r/o Village Mussewal, P.O. Rajpura, Tehsil Nalagarh, District Solan, H.P., for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 24.09.2007 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company *i.e.* M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide zimni* order dated 17.09.2022, which reads as under:

- 1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.**

- 2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.**

- 3. Relief**

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue No. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants *i.e.* M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had

approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories *i.e.* Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid

₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then when the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company *i.e.* M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner *i.e.* M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner *vide* separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent *i.e.* M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, *vide* separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed

between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27—01—2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार

पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।

5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
*Hardeep Singh Baba,
 President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of

the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence *i.e.* resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as **Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another**, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the

later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 29 of 2021

Instituted on : 17-02-2021

Decided on : 01-03-2023

Seema Devi w/o Shri Kishan Chand, r/o Village Kund (Kud), P.O. Harot, Tehsil Bangana, District Una, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner	:	Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, AR
For the Respondent	:	Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 01.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Seema Devi w/o Shri Kishan Chand, r/o Village Kund (Kud) P.O. Harot, Tehsil Bangana, District Una, H.P., for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit-III) Village Sallewal, Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 18.10.2005 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company *i.e.* M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide zimni* order dated 17.09.2022, which reads as under:

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue No. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants *i.e.* M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories *i.e.* Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained

under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company *i.e.* M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner *i.e.* M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the

petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner *vide* separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent *i.e.* M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, *vide* separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

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1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
 2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
 3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
 4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
 5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—

- (a) all parties to the industrial dispute;
- (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence *i.e.* resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their

signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave

even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having

appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 30 of 2021

Instituted on : 17-02-2021

Decided on : 01-03-2023

Shakuntla w/o Shri Rajinder Ram, VPO Tisiouta, Tehsil Vaishali, District Vaishali, Bihar. . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 01.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Shakuntla w/o Shri Rajinder Ram, VPO Tisiouta, Tehsil Vaishali, District Vaishali, Bihar, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 28.06.2005 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the

respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is

averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered

resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants *i.e.* M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workmen and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories *i.e.* Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected inter se the parties, which clearly shows that the respondent management had resorted to an

unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro Worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examiantion of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company *i.e.* M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruitted with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous

owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

- | प्रबंधन पक्ष | कामगार पक्ष |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की

प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैकट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
- (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the

closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation

merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made

representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the

workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 32 of 2021

Instituted on : 17-02-2021

Decided on : 01-03-2023

Ajay Kumar s/o Shri Pyara Lal, r/o Village Mastanpura, P.O. Khillian Tehsil Nalagarh,
 District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
 Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 21.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Ajay Kumar s/o Shri Pyara Lal, r/o Village Mastanpura, PO Khillian Tehsil Nalagarh, District Solan, H.P., for his reinstatement

in service before the management i.e. the Occupier/Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of November, 2013 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join

the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 12.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J. C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories *i.e.* Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro Worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC).**

20. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the

resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्याग-पत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have

carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in

its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180**, decided on 18.04.1968 wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter. "

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 33 of 2021

Instituted on : 17-02-2021

Decided on : 01-03-2023

Balbir Singh s/o Shri Natha Ram, r/o VPO Buraj, Tehsil Anandpur Sahib, District Ropar Punjab. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd. Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 21.01.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Balbir Singh s/o Shri Natha Ram, r/o VPO Buraj, Tehsil Anandpur Sahib, District Ropar Punjab, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 25.07.2007 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company *i.e.* M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interst of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro Worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and

circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examiantion of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruitted with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, concilaiton proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against

the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार

भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।

4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise then in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the

petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat And Another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have

immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number	:	34 of 2021
Instituted on	:	17-02-2021
Decided on	:	01-03-2023

Surjeet Kaur w/o Shri Ram, r/o Village Mussewal, P.O. Rajpura, Tehsil Nalagarh, District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. Through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J. C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 21.01.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Surjeet Kaur w/o Shri Ram, r/o Village Mussewal, PO Rajpura, Tehsil Nalagarh, District Solan, HP, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 01.06.2005 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company *i.e.* M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants *i.e.* M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories *i.e.* Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained

under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro Worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every worker has been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the

petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्याग—पत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--

-
- (a) all parties to the industrial dispute;
- (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their

signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave

even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the

respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 36 of 2021

Instituted on : 18-02-2021

Decided on : 01-03-2023

Karam Chand s/o Shri Sohan Lal, r/o Village Dhang Uperli, PO Plassi Kalan, Tehsil Nalagarh, District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. Through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Karam Chand s/o Shri Sohan Lal, r/o Village Dhang Uperli, P.O. Plassi Kalan, Tehsil Nalagarh, District Solan, H.P., for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 30.10.2013 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi

Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company *i.e.* M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two

lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants *i.e.* M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representagives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories *i.e.* Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the

respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro Worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers,

therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

- | प्रबंधन पक्ष | कामगार पक्ष |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ

बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह है कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
- (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the

closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation”

merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made

representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the

workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 38 of 2021

Instituted on : 18-02-2021

Decided on : 01-03-2023

Sunita Rani w/o Shri Ajay Sharma, r/o Village Dhang Nichli, PO Pargana Plassi, Tehsil Nalagarh, District Solan, H.P. . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd. Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
 Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Sunita Rani w/o Shri Ajay Sharma, r/o Village Dhang Nichli, P.O. Pargana Plassi, Tehsil Nalagarh, District Solan, HP, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 16.07.2008 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2029, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join

the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1 No

Issue No.2 No

Relief Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.. Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interst of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro Worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of th Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continous service for not less then one year and they had not been retrenched by the respodnent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respdonent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the

resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है, पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have

carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in

its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 39 of 2021

Instituted on : 18-02-2021

Decided on : 01-03-2023

Dharampal s/o Shri Jemal Singh, r/o Village Boah, PO Sour, Tehsil Nalagarh, District Solan, H.P.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd. Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been received from the Appropriate Government vide notification dated 10.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Dharampal s/o Shri Jemal Singh, r/o Village Boah, PO Sour, Tehsil Nalagarh, District Solan, H.P., for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallweal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of November, 2014 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties,

the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
 2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
 3. Relief
8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants *i.e.* M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements

arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories *i.e.* Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interst of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. And another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less then one year and they had not been retrenched by the respodnent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free

will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respdonent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examiantion of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company *i.e.* M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruitted with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner *i.e* M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, concilaiton proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent *i.e.* M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave

encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैकट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैकट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैकट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।

4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the**

establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise then in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the

resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that

his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 40 of 2021

Instituted on : 18-02-2021

Decided on : 01-03-2023

Mohinder Singh s/o Shri Tarsem Singh, r/o Village Badi Jakhian, PO Gardala, Tehsil & District Ropar Punjab.
. .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Mohinder Singh s/o Shri Tarsem Singh, r/o Village Badi Jakhian, PO Gardala, Tehsil & District Ropar Punjab, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 24.05.2013 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail.

The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants *i.e.* M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories *i.e.* Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained

under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. And another 1992 LLR 481 (SC)**.

20. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the

petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

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1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
 2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
 3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
 4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
 5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—

- (a) all parties to the industrial dispute;
- (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their

signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave

even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it

appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 64 of 2021

Instituted on : 01-03-2021

Decided on : 01-03-2023

Ranju Devi w/o Shri Surender Ram, r/o (130), District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 23.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Ranju Devi w/o Shri Surender Ram, r/o (130), District Solan, HP, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 14.10.2005 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company *i.e.* M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the

consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had

feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respoindent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representagives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri

mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. And another 1992 LLR 481 (SC)**.

20. **Per contra**, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then when the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous

company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलेक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो

कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सेलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.— (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she

had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December, 1993 or from 22nd December, 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and

evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is**

hereby dismissed. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 65 of 2021

Instituted on : 01-03-2021

Decided on : 01-03-2023

Gurpreet Kaur w/o Shri Balbinder (Bilender) Singh, r/o Village & PO Bharatgarh, District Ropar, Punjab. . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
 Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 23.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Gurpreet Kaur w/o Shri Balbinder (Bilender) Singh, r/o Village & PO Bharatgarh, District Ropar, Punjab, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting her resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Helper with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 08.08.2007 and thereafter the services of the petitioner were transferred to its sister concern i.e M/s Penguin Electronics Ltd., on 01.03.2019. The petitioner had completed more than 12 years with the respondents company. The petitioner had worked efficiently to the satisfaction of the respondent company. On 21.02.2020 the respondent management forcibly and illegally took the signatures of the petitioner on some blank papers and thereafter the respondent started causing interference in the joining of the duty by petitioner. On 22.02.2020, when the petitioner approached the respondent, the gatekeeper conveyed direction of the company management that the services of the petitioner are no more required and he was asked not to come on duty. The services of the petitioner were terminated illegally without affording any opportunity of being heard as neither any notice has been issued nor any domestic enquiry as envisaged under the Act has been conducted.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Forum may kindly be pleased to allow the petition of the petitioner/claimant thereby directing the respondent management to reinstate the services of the claimant/petition in the respondent company with respective effect i.e on 21.02.2020 with full back-wages, seniority and other consequential service benefits with cost throughout and further granting all the reliefs in favour of the petitioner, which are legally available to him under the above circumstances by way of accepting the present petition in the interest of justice.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh

recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:—

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants *i.e.* M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respodnent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representagives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories *i.e.* Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interst of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro Worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. And another 1992 LLR 481 (SC)**.

20. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of th Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continous service for not less then one year and they had not been retrenched by the respdnent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the

resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलेक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिस्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सेलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have

carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th, December 1993 or from 22nd December, 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by

the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180**, decided on 18.04.1968 wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 66 of 2021

Instituted on : 01-03-2021

Decided on : 01-03-2023

Lakshmi Devi w/o Shri Anusuiya r/o Village Pashta Malla, P.O. Bandana, District Pauri Gharwal Uttrakhand . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been received from the Appropriate Government vide notification dated 23.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Lakshmi Devi w/o Shri Anusuya, r/o Village Pashta Malla, PO Bandana, District Pauri Gharwal Uttrakhand, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Helper with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 10.06.2008 and thereafter the services of the petitioner were transferred to its sister concern *i.e.* M/s Penguin Electronics Ltd. on 01.03.2019. The petitioner had completed more than 12 years with the respondents company. The petitioner had worked efficiently to the satisfaction of the respondent company. On 21.02.2020 the respondent management forcibly and illegally took the signatures of the petitioner on some blank papers and thereafter the respondent started causing interference in the joining of the duty by petitioner. On 22.02.2020, when the petitioner approached the respondent, the gatekeeper conveyed direction of the company management that the services of the petitioner are no more required and he was asked not to come on duty. The services of the petitioner were terminated illegally without affording any opportunity of being heard as neither any notice has been issued nor any domestic enquiry as envisaged under the Act has been conducted.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Forum may kindly be pleased to allow the petition of the petitioner/claimant thereby directing the respondent management to reinstate the services of the claimant/petition in the respondent company with respective effect *i.e.* on 21.02.2020 with full back-wages, seniority and other consequential service benefits with cost throughout and further granting all the reliefs in favour of the petitioner, which are legally available to him under the above circumstances by way of accepting the present petition in the interest of justice.”

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a

legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:—

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief
8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements

arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories *i.e.* Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro Worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. And another 1992 LLR 481 (SC)**.

20. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free

will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respdonent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examiantion of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company *i.e.* M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruitted with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner *i.e* M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, concilaiton proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent *i.e* M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave

encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैकट्री पेंगुइन इलेक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिकरी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैकट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैकट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सेलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।

4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the**

establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise then in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the

resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th, December 1993 or from 22nd December, 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that

his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that : **"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."**

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number	:	68 of 2021
Instituted on	:	01-03-2021
Decided on	:	01-03-2023

Karamjeet Kaur w/o Shri Ramesh Kumar r/o Village Chanobari PO Ratwari, Tehsil Nalagarh, District Solan, H.P. . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd. Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. Through its Managing Director . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 23.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Karamjeet Kaur w/o Shri Ramesh Kumar, r/o Village Chanobari, PO Ratwari, Tehsil Nalagarh, District Solan, HP, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 19.07.2008 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement

dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants *i.e.* M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respoendnt, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representagives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories *i.e.* Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interst of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. And another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examiantion of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruitted with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, concilaiton proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar

that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलेक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।

2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सेलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

- “Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.**
- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—**
- (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or**

National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what

was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both."

There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 69 of 2021

Instituted on : 01-03-2021

Decided on : 01-03-2023

Jasvir Kaur w/o Shri Balbir Chand, r/o Village & PO Rajpura, Tehsil Nalagarh, District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 23.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Jasvir Kaur w/o Shri Balbir Chand, r/o Village & PO Rajpura, Tehsil Nalagarh, District Solan, HP for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting her resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Helper with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 08.08.2007 and thereafter the services of the petitioner were transferred to its sister concern i.e M/s Penguin Electronics Ltd., on 01.03.2019. The petitioner had completed more than 12 years with the respondents company. The petitioner had worked efficiently to the satisfaction of the respondent company. On 21.02.2020 the respondent

management forcibly and illegally took the signatures of the petitioner on some blank papers and thereafter the respondent started causing interference in the joining of the duty by petitioner. On 22.02.2020, when the petitioner approached the respondent, the gateman conveyed direction of the company management that the services of the petitioner are no more required and he was asked not to come on duty. The services of the petitioner were terminated illegally without affording any opportunity of being heard as neither any notice has been issued nor any domestic enquiry as envisaged under the Act has been conducted.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Forum may kindly be pleased to allow the petition of the petitioner/claimant thereby directing the respondent management to reinstate the services of the claimant/petition in the respondent company with respective effect i.e on 21.02.2020 with full back-wages, seniority and other consequential service benefits with cost throughout and further granting all the reliefs in favour of the petitioner, which are legally available to him under the above circumstances by way of accepting the present petition in the interest of justice."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by

misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 12.10.2022, which reads as under:

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered

resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respodnent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representagives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories *i.e.* Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an

unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. And another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company *i.e.* M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruitted with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous

owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

- | प्रबंधन पक्ष | कामगार पक्ष |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैकट्री पेंगुइन इलेक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैकट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की

प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैकट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सेलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
- (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the

closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation”

merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made

representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the

workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 70 of 2021

Instituted on : 01-03-2021

Decided on : 01-03-2023.

Jasbinder Singh s/o Shri Roshan Lal, r/o Village Matnoh, PO Swarghat, District Bilaspur,
 H.P. . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
 Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 23.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Jasbinder Singh s/o Shri Roshan Lal, r/o Village Matnoh, PO Swarghat, District Bilaspur, HP, for his reinstatement in service before

the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Helper with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 10.06.2008 and thereafter the services of the petitioner were transferred to its sister concern i.e M/s Penguin Electronics Ltd. on 01.03.2019. The petitioner had completed more than 12 years with the respondents company. The petitioner had worked efficiently to the satisfaction of the respondent company. On 21.02.2020 the respondent management forcibly and illegally took the signatures of the petitioner on some blank papers and thereafter the respondent started causing interference in the joining of the duty by petitioner. On 22.02.2020, when the petitioner approached the respondent, the gateman conveyed direction of the company management that the services of the petitioner are no more required and he was asked not to come on duty. The services of the petitioner were terminated illegally without affording any opportunity of being heard as neither any notice has been issued nor any domestic enquiry as envisaged under the Act has been conducted.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Forum may kindly be pleased to allow the petition of the petitioner/claimant thereby directing the respondent management to reinstate the services of the claimant/petition in the respondent company with respective effect i.e on 21.02.2020 with full back-wages, seniority and other consequential service benefits with cost throughout and further granting all the reliefs in favour of the petitioner, which are legally available to him under the above circumstances by way of accepting the present petition in the interest of justice."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested

to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 30.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1 No

Issue No.2 No

Relief. Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants *i.e.* M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respodnent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representagives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interst of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. And another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continous service for not less then one year and they had not been retrenched by the respdnent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the

resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलेक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सेलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have

carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As

rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date.

Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his

resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 71 of 2021

Instituted on : 01-03-2021

Decided on : 01-03-2023

Manju w/o Shri Narayan Dass, r/o VPO Rajpura, Tehsil Nalagarh, District Solan, H.P.
. . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director. *. . Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 23.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Manju w/o Shri Narayan Dass, r/o VPO Rajpura, Tehsil Nalagarh, District Solan, HP, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting her resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Helper with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 14.07.2008 and thereafter the services of the petitioner were transferred to its sister concern i.e. M/s Penguin Electronics Ltd., on 01.03.2019. The petitioner had completed more than 12 years with the respondents company. The petitioner had worked efficiently to the satisfaction of the respondent company. On 21.02.2020 the respondent management forcibly and illegally took the signatures of the petitioner on some blank papers and thereafter the respondent started causing interference in the joining of the duty by petitioner. On 22.02.2020, when the petitioner approached the respondent, the gatekeeper conveyed direction of the company management that the services of the petitioner are no more required and he was asked not to come on duty. The services of the petitioner were terminated illegally without affording any opportunity of being heard as neither any notice has been issued nor any domestic enquiry as envisaged under the Act has been conducted.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Forum may kindly be pleased to allow the petition of the petitioner/claimant thereby directing the respondent management to reinstate the services of the claimant/petition in the respondent company with respective effect i.e on 21.02.2020 with full back-wages, seniority and other consequential service benefits with cost throughout and further granting all the reliefs in favour of the petitioner, which are legally available to him under the above circumstances by way of accepting the present petition in the interest of justice.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties,

the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
 2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
 3. Relief
8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No.
Issue No.2	No.
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements

arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respoindent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representagives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories *i.e.* Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interst of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. And another 1992 LLR 481 (SC)**.

20. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of th Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less then one year and they had not been retrenched by the respoindent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free

will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respdonent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examiantion of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company *i.e.* M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruitted with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner *i.e* M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, concilaiton proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent *i.e* M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave

encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलेक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सेलरी (20—02—2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।

4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the**

establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise then in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the

resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that

his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	74 of 2021
Instituted on	:	10-03-2021
Decided on	:	01-03-2023

Khairat Singh s/o Shri Jemal Singh, r/o Village Rakwal Lahad, PO Chalor, Tehsil Jawalamukhi, District Kangra, HP. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Khairat Singh s/o Shri Jemal Singh, r/o Village Rakwal Lahad, PO Chalor, Tehsil Jawalamukhi, District Kangra, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of September, 2014 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement

dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1 No

Issue No.2 No

Relief Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respoindent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar

that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।

3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—**
- (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**

- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the

petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have

immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 76 of 2021

Instituted on : 10-03-2021

Decided on : 01-03-2023

Vasudev s/o Shri Ram Lal, r/o Village Jaghed, PO Kattal, Tehsil Nalagarh, District Solan,
H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Vasudev s/o Shri Ram Lal, r/o Village Jaghed, PO Kattal, Tehsil Nalagarh, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of August 2015 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to

allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief.	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respoindent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained

under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the

petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थिता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।

2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

- “Persons on whom settlements and awards are binding.— (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.**
- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—**
- (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or**

National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what

was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both."

There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :
"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 77 of 2021

Instituted on : 12-03-2021

Decided on : 01-03-2023

Balwant Singh s/o Shri Padam Singh, r/o Village Patta, PO Kattal, Tehsil Nalagarh, District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Balwant Singh s/o Shri Padam Singh, r/o Village Patta, PO Kattal, Tehsil Nalagarh, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of October 2015 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on

26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR .
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief.	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two

lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J. C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respodnent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton

effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand,

the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egs of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]

(3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--

- (a) all parties to the industrial dispute;**
- (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise then in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a

fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was

entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were

reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 78 of 2021

Instituted on : 12-03-2021

Decided on : 01-03-2023

Parveen Malik s/o Shri Gulshan Malik, r/o Village Kotla Power House, PO & Tehsil Anandpur Sahib, District Ropar Punjab. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P, through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Parveen Malik s/o Shri Gulshan Malik, r/o Village Kotla Power House, P.O. & Tehsil Anandpur Sahib, District Ropar Punjab, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per

clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during September 2008 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment

benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respodnent,

hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected inter se the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष

कामगार पक्ष

-
- | | |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

- | | |
|---------------------|----------------|
| प्रबंधन पक्ष | कामगार पक्ष |
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a

workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the

absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present

form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 79 of 2021

Instituted on : 12-03-2021

Decided on : 01-03-2023

H.P. Sawroop Singh s/o Shri Nichhiya Ram, r/o VPO Minjgram, Tehsil Nurpur, District Kangra,
 . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
 Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been received from the Appropriate Government vide notification dated 25.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Sawroop Singh s/o Shri Nichhiya Ram, r/o VPO Minjgram, Tehsil Nurpur, District Kangra, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 26.03.2008 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the

respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.

95. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
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Issue No.2	No.
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Relief.	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.
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REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continous service for not less then one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a

pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलेक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27—01—2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the

parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour

Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/

petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 84 of 2021

Instituted on : 01-04-2021

Decided on : 01-03-2023

Narender Kumar s/o Shri Ram Chand, r/o Village & PO Rajpura, Tehsil Nalagarh, District Solan, HP. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 12.03.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Narendra Kumar s/o Shri Ram Chand, r/o Village & PO Rajpura, Tehsil Nalagarh, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of September 2015 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant

thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respodnent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and

circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against

the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।

4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
*Hardeep Singh Baba,
 President, INTUC (H.P.).*

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.— (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of**

the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise then in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹ 2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the

later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 85 of 2021

Instituted on : 01-04-2021

Decided on : 01-03-2023

Salinder Kumar s/o Shri Jagat Ram, r/o Village Bauh, PO Saur, Tehsil Nalagarh, District Solan, HP. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 16.03.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Salinder Kumar s/o Shri Jagat Ram, r/o Village Bauh, PO Saur, Tehsil Nalagarh, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of November 2014 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹ 2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respoindent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹ 2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained

under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹ 2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the

petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

- यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।

2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बही को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बही के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

- “Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.**
- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—**
- (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**

- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at

between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The

Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 88 of 2021

Instituted on : 01-04-2021

Decided on : 01-03-2023

Raj Kumar s/o Shri Ranjit, r/o Village Radyali, PO Rajpura, Tehsil Nalagarh, District Solan,
H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 16.03.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Raj Kumar s/o Shri Ranjit, r/o Village Radyali, PO Rajpura, Tehsil Nalagarh, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 14.03.2008 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner

applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner/claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is

averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of '2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respoindent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer.

There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings

were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैकट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बही को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बही के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]

- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
- (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining

of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat And Another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of

the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it

appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again cannot be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 89 of 2021

Instituted on : 01-04-2021

Decided on : 01-03-2023

Subhash Kaushal s/o Shri Nand Lal, r/o Village Jaged, PO Kattal, Tehsil Nalagarh, District Solan, HP. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 15.03.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Subhash Kaushal s/o Shri Nand Lal, r/o Village Jaged, PO Kattal, Tehsil Nalagarh, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village

Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of May 2015 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had

gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respodnent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has

been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interst of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less then one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹ 2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष

कामगार पक्ष

- | | |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैकट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैकट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैकट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

- | | |
|---------------------|----------------|
| प्रबंधन पक्ष | कामगार पक्ष |
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.— (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have

carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹ 2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as **Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470**, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in

its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180**, decided on 18.04.1968 wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number	: 91 of 2021
Instituted on	: 05-04-2021
Decided on	: 01-03-2023

Namdan s/o Shri Jagdish, r/o Village Sallewal, PO Rajpura, Tehsil Nalagarh, District Solan,
H.P. . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director. Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 15.03.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Namdan s/o Shri Jagdish, r/o Village Sallewal, PO Rajpura, Tehsil Nalagarh, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 26.08.2013 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR .
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not

conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interst of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continous service for not less then one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same

has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, concilaiton proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent

management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैकट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिस्री बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैकट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थिता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैकट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।

5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

- “Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.**
- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—**
- (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise then in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement

was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the

services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 92 of 2021

Instituted on : 05-04-2021

Decided on : 01-03-2023

Hariom s/o Shri Jagdish Chand, r/o VPO Bhogpur, Tehsil Nalagarh, District Solan, H.P.
. . Petitioner.

VERSUS

59. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

60. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 15.03.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Hariom s/o Shri Jagdish Chand, r/o VPO Bhogpur Tehsil Nalagarh, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 18.09.2013 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the

claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No. 2	No
Relief.	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of '2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respodnent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and

circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against

the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार

भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।

4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बही को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बही के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

- “Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.**
- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
 - (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise then in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the

petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have

immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	: 94 of 2021
Instituted on	: 05-04-2021
Decided on	: 01-03-2023

Anil Kumar s/o Shri Ram Krishan, r/o Village Punaila, P.O. Diggal, Tehsil Nalagarh,
District Solan, H.P. . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III) Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner	:	Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, AR.
For the Respondent	:	Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been received from the Appropriate Government vide notification dated 22.03.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Anil Kumar s/o Shri Ram Krishan, r/o Village Punaila, PO Diggal, Tehsil Nalagarh, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of November 2014 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement

dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of '2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respoendnt, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar

that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष

सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।

3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or

National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what

was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both."

There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 95 of 2021

Instituted on : 05-04-2021

Decided on : 01-03-2023

Vivek Kumar s/o Shri Sawarn Singh, r/o Village & PO Nandrul, Tehsil and District Kangra,
H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 22.03.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Vivek Kumar s/o Shri Sawarn Singh, r/o Village & PO Nandrul, Tehsil and District Kangra, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallweal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 01.11.2014 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner

applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is

averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two

lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respodnent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that

why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the

alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए

कुछएक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सेलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
- (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to

prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves

to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very

important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again cannot be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	96 of 2021
Instituted on	:	05-04-2021
Decided on	:	01-03-2023

Amarjeet s/o Shri Baldev, r/o Village Sunad, PO Saur, Tehsil Ramshaher, District Solan,
 H.P. . . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd. Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner	:	Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, AR.
For the Respondent	:	Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 22.03.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Amarjeet s/o Shri Baldev, r/o Village Sunad, PO Saur, Tehsil Ramshaher, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd.,

Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of November 2014 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner/claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits

from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1 No

Issue No. 2 No

Relief Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard.

Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then when the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
	2. यश पाल

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by

INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a

workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it

will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference

notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 97 of 2021

Instituted on : 05-04-2021

Decided on : 01-03-2023

Gurvinder Singh s/o Shri Ram Dass Singh, r/o Village Dhang, PO Plassi Kalan, Tehsil Nalagarh, District Solan, HP. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
 Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 22.03.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Gurvinder Singh s/o Shri Ram Dass Singh, r/o Village Dhang, PO Plassi Kalan, Tehsil Nalagarh, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 10.01.2015 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief.	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the

management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected inter se the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. And another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹ 2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary

evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruitted with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of

INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थिता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सेलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा।

कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।

5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बढ़ी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of

the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the

later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no. 1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 106 of 2021

Instituted on : 06-05-2021

Decided on : 01-03-2023

Parvati w/o Shri Sahab Deen, r/o Village Jasarpur, P.O. Motigang, Tehsil Bikapur, District Faizabad U.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner	:	Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, AR.
For the Respondent	:	Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 26.03.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Smt. Parvati w/o Shri Sahab Deen, r/o Village Jasarpur, PO Motigang, Tehsil Bikapur, District Faizabad UP, Pin No. 224 204, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 02.07.2008 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2029, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement

dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respoendnt, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interst of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar

that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

- | प्रबंधन पक्ष | कामगार पक्ष |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष

सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।

3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or

National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what

was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹ 2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹ 2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹ 2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both."

There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 107 of 2021

Instituted on : 06-05-2021

Decided on : 01-03-2023

Sangat Singh s/o Shri Bir Singh, r/o Village Bada Basot, PO Plassi Kalan, Tehsil Nalagarh, District Solan, H.P. . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 26.03.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Sangat Singh s/o Shri Bir Singh, r/o Village Bada Basot, PO Plassi Kalan, Tehsil Nalagarh, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of September 2007 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on

26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR .

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation

and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respodnent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton

effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand,

the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

- | प्रबंधन पक्ष | कामगार पक्ष |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए

कुछएक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
- (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the

closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation”

merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made

representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the

workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	108 of 2021
Instituted on	:	06-05-2021
Decided on	:	01-03-2023

Kulwant Singh s/o Shri Rajinder Singh, r/o Village & PO Dabhota, Tehsil Nalagarh, District solan, H.P.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner	:	Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, AR.
For the Respondent	:	Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 26.03.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Kulwant Singh s/o Shri Rajinder Singh, r/o Village & PO Dabhota, Tehsil Nalagarh, District Solan, HP, for his reinstatement in service

before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since September 2007 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits

from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers

personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed form F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected inter se the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then when the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair.

Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष

कामगार पक्ष

- | | |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

1. रमेश कुमार चंदेल

कामगार पक्ष

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.— (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a

workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the

absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present

form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H. P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 109 of 2021

Instituted on : 01-03-2021

Decided on : 01-03-2023

Aman s/o Shri Brahmanand, r/o Village Rampur, P.O. Ganguwal, Tehsil Anandpur Sahib, District Ropar, Punjab. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
 Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been received from the Appropriate Government vide notification dated 26.03.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Aman s/o Shri Brahmanand, r/o Village Rampur, P.O. Ganguwal, Tehsil Anandpur Sahib, District Ropar, Punjab, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallweal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of Feb., 2015 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR .
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief.	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment

voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workmen and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected inter se the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not

established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then whey the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27—01—2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding.— (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was

arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature

was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the

workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 167 of 2021

Instituted on : 04-09-2021

Decided on : 01-03-2023

Mohan Singh s/o Shri Ramjji Dass, r/o Village Sallewal, P.O. Rajpura, Tehsil Nalagarh,
 District Solan, H.P. .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director. . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 16.04.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Mohan Singh s/o Shri Ramjji Dass, r/o Village Sallewal, P.O. Rajpura, Tehsil Nalagarh, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 29.12.2006 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative

by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:—

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also

reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representagives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaition effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s

Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैकट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैकट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थिता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

- यह कि फैकट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
- यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।

3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**

- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the

petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have

immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 170 of 2021

Instituted on : 04-09-2021

Decided on : 01-03-2023

Avtar Singh s/o Shri Sadh Ram, r/o Village Saner, P.O. Manpura, Tehsil Nalagarh, District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 09.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Avtar Singh s/o Shri Sadh Ram, r/o Village Saner, P.O. Manpura, Tehsil Nalagarh, District Solan, H.P., for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 17.09.2013 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail.

The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect?
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR .
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Concilaition Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements

were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the

petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

- यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।

2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or**

National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what

was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both."

There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 172 of 2021

Instituted on : 04-09-2021

Decided on : 01-03-2023

Rajeev Kumar s/o Shri Ramesh Chand, r/o Village Dhar Kharoti, P.O. Rav, Tehsil Rakkar District Kangra, H.P. . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 09.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Rajeev Kumar s/o Shri Ramesh Chand, r/o Village Dhar Kharoti, P.O. Rav, Tehsil Rakkar District Kangra, HP, for his reinstatement in service before the management i.e. the Occupier/Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of October, 2015 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on

26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of '2,00,000/- (two

lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the

respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the

alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंद्रेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिकरी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए

कुछएक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
- (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the

closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation”

merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option

left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no. 1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 173 of 2021

Instituted on : 04-09-2021

Decided on : 01-03-2023

Anita Kaur w/o Shri Shamsher Singh, r/o Village & P.O. Bharatgarh, Tehsil & District Ropar, Punjab. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Smt. Anita Kaur w/o Shri Shamsher Singh, r/o Village & P.O. Bharatgarh, Tehsil & District Ropar, Punjab, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the

management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 24.11.2006 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company

found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:—

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR .
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Lt. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner

and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of th Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less then one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

- | प्रबंधन पक्ष | कामगार पक्ष |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external

pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he

was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is**

hereby dismissed. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 174 of 2021

Instituted on : 04-09-2021

Decided on : 01-03-2023

Sonal Devi w/o Shri Shivaji Parsad, r/o Village Baliban, District Gopalganj, Bihar.

. .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Smt. Sonal Devi w/o Shri Shivaji Parsad, r/o Village Baliban District Gopalganj, Bihar, for her reinstatement in service before the management i.e.

the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 2007 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits

from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
 2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
 3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers

personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of th Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less then one year and they had not been retrenched by the respodnent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair.

Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have

carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in

its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 175 of 2021

Instituted on : 04-09-2021

Decided on : 01-03-2023

Ami Samal s/o Shri Vibhuti Samal r/o Village Dinbandh, P.O. & Tehsil Kalang, District Dhenkanal Orisas . .Petitioner.

VERSUS

1. The Occupier/Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
 Shri J.C Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been received from the Appropriate Government vide notification dated 25.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Ami Samal s/o Shri Vibhuti Samal, r/o Village Dinbandh, PO & Tehsil Kalang, District Dhenkanal Orisas, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 1.11.2006 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation,

which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief.	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had

approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Concilaition Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. And another 1992 LLR 481 (SC)**.

20. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less then one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the

reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen.

Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार

पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।

5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बही के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

1. रमेश कुमार चंदेल

कामगार पक्ष

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

- “Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.**
- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
 - (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise then in the course of conciliation proceeding

shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the

services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 178 of 2021

Instituted on : 04-09-2021

Decided on : 01-03-2023

Deepak Raj s/o Shri Amardev, r/o Village Narad, P.O. Massewal, Tehsil Anandpur Sahib,
 District Ropar Punjab.
 . .Petitioner.

VERSUS

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1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
 2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner :	Ms. Neetu Sharma, Advocate and Shri J. C. Bhardwaj, AR.
For the Respondent :	Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 16.04.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Deepak Raj s/o Shri Amardev r/o Village Narad, P.O. Massewal, Tehsil Anandpur Sahib, District Ropar Punjab, for his reinstatement in service before the management i.e. the Occupier/Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallweal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 26.9.2017 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative

by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue No. 1 No

Issue No. 2 No

Relief Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also

reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s

Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैकट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैकट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैकट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।

3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the

petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have

immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 179 of 2021

Instituted on : 04-09-2021

Decided on : 01-03-2023

Kanta Devi w/o Shri Santosh Kumar, r/o Village Dugri, P.O. Malikpur, Tehsil & District Ropar, Punjab . . . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 06.04.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Smt. Kanta Devi w/o Shri Santosh Kumar, r/o Village Dugri, P.O. Malikpur, Tehsil & District Ropar, Punjab, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 20.09.2007 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner

applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner/claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:—

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:—

Issue no. 1	No.
Issue No. 2	No.
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of

₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the

respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected inter se the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the

alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिकरी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए

कुछएक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

1. रमेश कुमार चंदेल

कामगार पक्ष

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
- (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of

proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding

of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option

left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 212 of 2021

Instituted on : 09-11-2021

Decided on : 01-03-2023

Swaran Singh s/o Shri Pritam Singh, r/o Village Kanganwal, P.O. Plassi Kalan, Tehsil Nalagarh, District Solan, H.P. .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Swaran Singh s/o Shri Pritam Singh, r/o Village Kanganwal, P.O. Plassi Kalan, Tehsil Nalagarh, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per

clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Helper with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment

benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR .
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1 No

Issue No. 2 No

Relief Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respdonent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the

resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

- | | |
|---------------------|----------------|
| प्रबंधन पक्ष | कामगार पक्ष |
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |

गवाह
*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have

carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in

its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 214 of 2021

Instituted on : 09-11-2021

Decided on : 01-03-2023

Tirath Singh s/o Shri Prem Singh, r/o Village Sauri Gujra, P.O. Panjehra, Tehsil Nalagarh,
District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner	:	Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, AR.
For the Respondent	:	Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Tirath Singh s/o Shri Prem Singh, r/o Village Sauri Gujra, PO Panjehra, Tehsil Nalagarh, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 15.05.2015 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties,

the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR .
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements

arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been singed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less then one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per

settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their

resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थिता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार

पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।

5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of**

the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the

later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 217 of 2021

Instituted on : 09-11-2021

Decided on : 01-03-2023

Sandeep Kumar s/o Shri Prem Lal, r/o Village Dhoun Kothi, Tehsil Sadar, District Bilaspur,
H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate
AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Sandeep Kumar s/o Shri Prem Lal r/o Village Dhoun Kothi, Tehsil Sadar, District Bilaspur, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 26.06.2015 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement

dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar

that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष

कामगार पक्ष

- | | |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिस्री बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

- यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
- यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष

सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।

3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or

National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what

was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both."

There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 220 of 2021

Instituted on : 09-11-2021

Decided on : 01-03-2023

Jaswant Singh s/o Shri Ram Lok, r/o Village Dhang Uperli, P.O. Plassi Kalan, Tehsil Nalagarh, District Solan, H.P.Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J. C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Jaswant Singh s/o Shri Ram Lok, r/o Village Dhang Uperli, P.O. Plassi Kalan, Tehsil Nalagarh, District Solan, H.P., for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 13.11.2013 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner

applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is

averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief.	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation

and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers persoanlly nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected

interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand,

the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egs of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष

कामगार पक्ष

- | | |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए

कुछएक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

1. रमेश कुमार चंदेल

कामगार पक्ष

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
- (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the

closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation”

merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made

representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the

workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 221 of 2021

Instituted on : 09-11-2021

Decided on : 01-03-2023

Gursevak Singh s/o Shri Pal Singh, r/o Village Kashambhowal Gurjan, PO Manpura Tehsil Nalagarh, District solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Gursevak Singh s/o Shri Pal Singh, r/o Village Kashambhowal Gurjan, P.O. Manpura, Tehsil Nalagarh, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 07.02.2015 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work

shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
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Issue No. 2	No
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Relief

Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the

resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have

carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in

its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180**, decided on 18.04.1968 wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 223 of 2021

Instituted on : 09-11-2021

Decided on : 01-03-2023

Melo Devi w/o Shri Nand Lal, r/o Village & P.O. Khillian, Tehsil Nalagarh, District Solan,
H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Smt. Melo Devi w/o Shri Nand Lal, r/o Village & PO Khillian, Tehsil Nalagarh, District Solan, HP, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III), Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 10.08.2007 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2029, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had

approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representagives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of th Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less then one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid

₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed

between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थिता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27—01—2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार

पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।

5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of**

the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 225 of 2021

Instituted on : 15-11-2021

Decided on : 01-03-2023

Lakshman Ram s/o Shri Beli Ram, r/o PO Balera, Tehsil Arki, District Solan, HP.

. . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director. . .*Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Lakshman Ram s/o Shri Beli Ram, r/o PO Balera, Tehsil Arki, District Solan, HP, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since September, 2014 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative

by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also

reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s

Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष

कामगार पक्ष

- | | |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैकट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैकट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैकट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।

3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

- “Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.**
- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--**
- (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the

petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have

immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 226 of 2021

Instituted on : 15-11-2021

Decided on : 01-03-2023

Hardev Singh s/o Shri Gurbachan Singh, r/o Village Dhang Uparli, P.O. Plassi Kalan, Tehsil Nalagarh, District Solan, H.P. . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director. . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Shri Hardev Singh s/o Shri Gurbachan Singh, r/o Village Dhang Uparli, P.O. Plassi Kalan, Tehsil Nalagarh, District Solan, H.P., for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 18.10.2005 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The

petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief.	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the

settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record

that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. **Per contra**, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--

- (a) all parties to the industrial dispute;
- (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their

signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave

even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it

appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	228 of 2021
Instituted on	:	15-11-2021
Decided on	:	01-03-2023

Usha Devi w/o Shri Ram Kumar, r/o Village Saner, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director. .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner	:	Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, AR.
For the Respondent	:	Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

“Whether the demand of Smt. Usha Devi w/o Shri Ram Kumar, r/o Village Saner, PO Bhatian, Tehsil Nalagarh, District Solan, HP, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting her resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallweal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per

clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 29.03.2010 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives

recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:—

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:—

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Lt. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner

and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

- | प्रबंधन पक्ष | कामगार पक्ष |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered

his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a

crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 232 of 2021

Instituted on : 15-11-2021

Decided on : 01-03-2023

Vineeta Pal w/o Shri Lakhan Singh, r/o Village Harpura Baoemak, Tehsil Sikandra, Kanpur Dehat, Uttar Pradesh. . .Petitioner .

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:—

"Whether the demand of Smt. Vineeta Pal w/o Shri Lakhan Singh, r/o Village Harpura Baoemak, Tehsil Sikandra, Kanpur Dehat, Uttar Pradesh, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting her resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 10.08.2007 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the

respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR .
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
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Issue No. 2	No
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Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.
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REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of th Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less then one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to

the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27—01—2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the

parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour

Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the

workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 233 of 2021

Instituted on : 15-11-2021

Decided on : 01-03-2023

Saroj Kumari w/o Shri Gurdev Singh, r/o Village Saner, P.O. Bhatian, Tehsil Nalagarh,
 District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Saroj Kumari w/o Shri Gurdev Singh, r/o Village Saner, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P., for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting her resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 29.03.2010 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant

thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. **Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.**

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..*OPR*.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also

reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representagives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s

Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैकट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैकट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थिता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैकट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।

3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

- “Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.**
- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--**
- (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**

- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the

petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have

immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number	:	234 of 2021
Instituted on	:	15-11-2021
Decided on	:	01-03-2023

Harvinder Kumar s/o Shri Balwant, r/o Village Daryal, P.O. Galed, Tehsil Sujanpur Tihra, District Hamirpur, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner	:	Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, AR
For the Respondent	:	Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Harvinder Kumar s/o Shri Balwant, r/o Village Daryal, P.O. Galed, Tehsil Sujanpur Tihra, District Hamirpur, H.P., for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since April 2012 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per

settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.

- 2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.**

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar

that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष

सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।

3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or

National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what

was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both."

There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 236 of 2021

Instituted on : 15-11-2021

Decided on : 01-03-2023

Ranju Lata Samal w/o Shri Madhu Sudan Samal, r/o Village & P.O. Kalang District Dhekanal, Odisha-759015 . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Ranju Lata Samal w/o Shri Madhu Sudan Samal, r/o Village & P.O. Kalang, District Dhekanal, Odisha-759015, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 15.11.2005 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi

Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

- 1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect?** ..OPP.

- 2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged?** ..OPR .

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of

₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the

respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of th Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less then one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less then one year of service. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the

alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

- | प्रबंधन पक्ष | कामगार पक्ष |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ

बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग-पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
- (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the

closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation”

merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made

representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the

workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	238 of 2021
Instituted on	:	15-11-2021
Decided on	:	01-03-2023

Hussan Deep s/o Shri Pyara Lal, r/o Village Mastanpur, P.O. Khillian, Tehsil Nalagarh,
 District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner	:	Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, AR.
For the Respondent	:	Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Hussan Deep s/o Shri Pyara Lal< r/o Village Mastanpur, P.O. Khillian, Tehsil Nalagarh, District Solan, HP, for his reinstatement

in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 21.02.2019 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh

recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. **Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.**
2. **Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR.**

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent,

hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
	2. यश पाल

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

- “Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.**
- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
- (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in

her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat And Another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the

award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made

representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the

workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 240 of 2021

Instituted on : 09-12-2021

Decided on : 01-03-2023

Lal Singh s/o Shri Narain Singh, r/o Village Paloa Knaita, P.O. Saur, Tehsil Nalagarh, District Solan, H.P. . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Lal Singh s/o Shri Narain Singh, r/o Village Paloa Knaita, P.O. Saur, Tehsil Nalagarh, District Solan, H.P., for his reinstatement in

service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of November 2014 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join

the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

- 1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.**
- 2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.**

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers

personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair.

Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have

carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by

the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 242 of 2021

Instituted on : 09-12-2021

Decided on : 01-03-2023

Ishwar Kumar s/o Shri Nand Lal, r/o Village Mahadev, P.O. Bhogpur, Tehsil Nalagarh, District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been received from the Appropriate Government vide notification dated 11.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Ishwar Kumar s/o Shri Nand Lal, r/o Village Mahadev, P.O. Bhogpur, Tehsil Nalagarh, District Solan, H.P., for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 11.09.2013 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties,

the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

- 1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? . .OPP.**
- 2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . .OPR .**
- 3. Relief**

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements

arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free

will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave

encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।

4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of

the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise then in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the

resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that

his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number	:	244 of 2021
Instituted on	:	09-12-2021
Decided on	:	01-03-2023

Bhagwati w/o Shri Ganga Ram, r/o Village Radyali, P.O. Rajpura, Tehsil Nalagarh, District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 15.6.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Bhagwati w/o Shri Ganga Ram, r/o Village Radyali, P.O. Rajpura, Tehsil Nalagarh, District Solan, H.P., for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (unit III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 04.07.2006 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The

termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained

under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resigantion a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apperant from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly established that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the

petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थिता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।

2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--**
- (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or**

National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what

was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both."

There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	245 of 2021
Instituted on	:	09-12-2021
Decided on	:	01-03-2023

Baby Devi w/o Shri Aditya, r/o Village Sallewal, P.O. Rajpura, Tehsil Nalagarh, District Solan, H.P. .*Petitioner.*

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director .*Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 15.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Baby Devi w/o Shri Aditya, r/o Village Sallewal, P.O. Rajpura, Tehsil Nalagarh, District Solan, H.P., for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting her resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 07.02.2008 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the

respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is

averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 12.10.2022, which reads as under:

1. **Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect?** ..OPP.
2. **Whether the claim petition is neither competent nor maintainable in the present form, as alleged?** ..OPR .

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief.	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered

resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair

labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s

Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बही को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बही के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

1. रमेश कुमार चंदेल

कामगार पक्ष

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]

- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
- (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise then in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a

fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent

workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were

reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 245 of 2021
 Instituted on : 27-9-2022
 Decided on : 01-03-2023

Joginder Singh s/o Shri Chakhu Ram, r/o VPO Kattal, Tehsil Nalagarh, District Solan, H.P.
 . .Petitioner .
VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
 Shri J.C. Bhardwaj, AR
 For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 23.02.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Joginder Singh s/o Shri Chakhu Ram, r/o VPO Kattal, Tehsil Nalagarh, District Solan, H.P., for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District

Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallwal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of November 2013 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested

to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 30.09.2022, which reads as under:

- 1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.**

- 2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.**

- 3. Relief**

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers

personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair.

Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष

कामगार पक्ष

- | | |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

1. रमेश कुमार चंदेल

कामगार पक्ष

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have

carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in

its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180**, decided on 18.04.1968 wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 249 of 2021

Instituted on : 09-12-2021

Decided on : 01-03-2023

Labh Singh s/o Shri Dharam Singh, r/o Village Saner, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. . Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director. . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
 Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

A W A R D

The following reference petition has been, received from the Appropriate Government vide notification dated 11.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Labh Singh s/o Shri Dharam Singh, r/o Village Saner, P.O. Bhatian Tehsil Nalagarh, District Solan, H.P., for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since November 2014 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

- 1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.**
- 2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.**
- 3. Relief**

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had

approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid

₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed

between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।

5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

1. रमेश कुमार चंदेल

कामगार पक्ष

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise then in the course of conciliation proceeding

shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as ***Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470***, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that

the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 250 of 2021

Instituted on : 09-12-2021

Decided on : 01-03-2023

H.P. Naresh Kumar s/o Shri Babu Ram, r/o Village & P.O. Kohu Tehsil Nalagarh, District Solan,
.Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .*Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 09.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Naresh Kumar s/o Shri Babu Ram, r/o Village & P.O. Kohu ,Tehsil Nalagarh, District Solan, H.P., for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since November 2014 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. **Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per**

settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar

that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
--------------	-------------

- | | |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

- यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
- यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष

सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।

3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or

National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what

was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both."

There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 251 of 2021

Instituted on : 09-12-2021

Decided on : 01-03-2023

Ajit Singh s/o Shri Gurmail Singh, r/o Village Kanganwal, PO Plassi Kalan, Tehsil Nalagarh, District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 09.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Ajit Singh s/o Shri Gurmail Singh, r/o Village Kanganwal, P.O. Plassi Kalan, Tehsil Nalagarh, District Solan, H.P., for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 08.02.2014 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was

taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full &

final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

- 1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.**
- 2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.**

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh

hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same

can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent

company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष

कामगार पक्ष

- | | |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ

से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछएक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

1. रमेश कुमार चंदेल

कामगार पक्ष

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she

had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are form natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and

evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is**

hereby dismissed. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 252 of 2021

Instituted on : 09-12-2021

Decided on : 01-03-2023

Dhiraj Kumar s/o Shri Shiv Kumar, r/o VPO Bharatgarh, Tehsil Ropar, District Ropar
Punjab . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 09.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Dhiraj Kumar s/o Shri Shiv Kumar, r/o VPO Bharatgarh, Tehsil Ropar, District Ropar Punjab, for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 26.6.2013 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh

recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 12.10.2022, which reads as under:

1. **Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect?** ..OPP.
2. **Whether the claim petition is neither competent nor maintainable in the present form, as alleged?** ..OPR.
3. **Relief**

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the

resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष

कामगार पक्ष

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| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

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| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
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गवाह

Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have

carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in

its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180**, decided on 18.04.1968 wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 254 of 2021

Instituted on : 09-12-2021

Decided on : 01-03-2023

Pradeep Kumar s/o Shri Gurpal, r/o Village Churangal, P.O. Swarghat, Tehsil Nalagarh,
 District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Pradeep Kumar s/o Shri Gurpal, r/o Village Churangal, P.O. Swarughat, Tehsil Nalagarh, District Solan, H.P., for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 07.07.2014 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties,

the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 30.09.2022, which reads as under:

- 1. Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.**
- 2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR .**
- 3. Relief**

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements

arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free

will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave

encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।

4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of**

the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the

later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order he chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to raise up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 273 of 2021

Instituted on : 14-12-2021

Decided on : 01-03-2023

Samina w/o Shri Samsudin r/o Village & P.O. Rajpura, Tehsil Nalagarh, District Solan,
H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. Through its Managing Director. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner	:	Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, AR
For the Respondent	:	Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 26.03.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Samina w/o Shri Samsudin, r/o Village & P.O. Rajpura, Tehsil Nalagarh, District Solan, H.P., for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during May, 2017 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained

under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the

petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
	2. यश पाल

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।

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2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—**
- (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or**

National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what

was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both."

There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 276 of 2021

Instituted on : 14-12-2021

Decided on : 01-03-2023

Ram Kumari w/o Shri Mohan Lal, r/o Village & P.O. Bharatgarh, Tehsil Ropar, Punjab.
. .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Ram Kumari w/o Shri Mohan Lal, r/o Village & P.O. Bharatgarh, Tehsil Ropar, Punjab, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 08.01.2010 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the

respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by

misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

- 1. Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect?** ..OPP.
- 2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged?** ..OPR .
- 3. Relief**

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered

resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair

labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. And another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s

Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैकट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैकट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बही को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बही के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]

(3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--

- (a) all parties to the industrial dispute;**
- (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise then in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a

fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent

workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were

reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
*Presiding Judge,
 Industrial Tribunal-cum-
 Labour Court, Shimla.*

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
 TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	278 of 2021
Instituted on	:	14-12-2021
Decided on	:	01-03-2023

Jasbir Singh s/o Shri Sawran Singh, r/o Village Radiyalli, P.O. Rajpura, Tehsil Nalagarh, District Solan, H.P. .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner	:	Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, AR
For the Respondent	:	Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Jasbir Singh s/o Shri Sawran Singh, r/o Village Radiyalli, P.O. Rajpura, Tehsil Nalagarh, District Solan, H.P., for his reinstatement in

service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 02.02.2008 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh

recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. **Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect?** . .OPP.
2. **Whether the claim petition is neither competent nor maintainable in the present form, as alleged?** . .OPR .

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1 No

Issue No. 2 No

Relief Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers

personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workmers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid concilaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair.

Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष

कामगार पक्ष

- | | |
|---------------------|----------------|
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग-पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग-पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग-पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

- | | |
|---------------------|----------------|
| प्रबंधन पक्ष | कामगार पक्ष |
| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |

गवाह
Hardeep Singh Baba,
President, INTUC (H.P.).

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]**
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—**
 - (a) all parties to the industrial dispute;**
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;**
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;**
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”**

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have

carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in

its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 279 of 2021

Instituted on : 14-12-2021

Decided on : 01-03-2023

Avdesh Kaur w/o Shri Manmohan Singh, r/o VPO Rajpura, Tehsil Nalagarh, District Solan,
 H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P Through its Managing Director . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
 Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been received from the Appropriate Government vide notification dated 25.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Avdesh Kaur W/o Shri Manmohan Singh R/o VPO Rajpura, Tehsil Nalagarh, District Solan, HP, for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting her resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallweal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 01.06.2005 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

“It is therefore prayed that this Hon’ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the

respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. **Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect?** ..OPP.
2. **Whether the claim petition is neither competent nor maintainable in the present form, as alleged?** ..OPR.
3. **Relief**

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment

voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not

established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27—01—2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the

parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour

Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 280 of 2021

Instituted on : 14-12-2021

Decided on : 01-03-2023

Davinder Kumar s/o Shri Om Parkash, r/o Village & P.O. Kohu, Tehsil Nalagarh, District Solan, H.P. .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR.

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 09.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Shri Davinder Kumar s/o Shri Om Parkash, r/o Village & P.O. Kohu, Tehsil Nalagarh, District Solan, H.P., for his reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) during the month of November, 2014 and remained as such till his illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till he was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow him to join his duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered his resignation, which was duly accepted by the respondent and a sum of Rs. 2,00,000/- (two lacs) has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.09.2022, which reads as under:

1. **Whether the demand of the petitioner for his reinstatement in service before the management of respondent company after submitting his resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per**

settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect? ..OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no. 1	No
Issue No. 2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially he was engaged with M/s Prithi Kitchen. He further admitted that there was a union in the M/s Prithi Kitchen. He had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. He admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. He again admitted to have joined as fresh hand with Penguin Ltd. He further admitted that he had not completed one year service with the Penguin Ltd. He again admitted that he was paid salary for no work. He feigned ignorance that the dispute was raised before the Labour Officer. He again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. He denied that he tendered his resignation and received full and final settlement. He further denied that she tendered resignation out of his free will and volition. He had also denied that after receiving full & final settlement, he is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliaiton effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. They argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar

that the petitioner do not want any substantive relief against the previous owner and there by the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18—1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20—2—2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलेक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिस्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20—02—2020) तथा विशेष

सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।

3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or

National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in his own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what

was the occasion for the petitioner not to raise his voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, Decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

"In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both."

There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that he was forced to tender his resignation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he has not been terminated illegally. He is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmad.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 281 of 2021

Instituted on : 14-12-2021

Decided on : 01-03-2023

Neelam Devi w/o Shri Gurcharan Singh, r/o Village & PO Plassi Kalan, Tehsil Nalagarh,
District Solan, H.P. . .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.

2. M/s Prithi Kitchen Appliances Pvt. Ltd., (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Ms. Neetu Sharma, Advocate and
Shri J.C. Bhardwaj, AR

For the Respondent : Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 09.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Neelam Devi w/o Shri Gurcharan Singh, r/o Village & P.O. Plassi Kalan, Tehsil Nalagarh, District Solan, H.P., for her reinstatement in service before the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting his resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?”

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 20.07.2009 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the

respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is

averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 17.09.2022, which reads as under:

1. **Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect?** ..OPP.
2. **Whether the claim petition is neither competent nor maintainable in the present form, as alleged?** ..OPR .

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1	No
Issue No.2	No
Relief	Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered

resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair

labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. and another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019**.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s

Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष	कामगार पक्ष
1. रमेश कुमार चंदेल	1. मुकेश कुमार
2. यश पाल	

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैकट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैकट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ / कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्यागपत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बही को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बही के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

1. रमेश कुमार चंदेल

1. मुकेश कुमार

गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]

- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
- (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise then in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own handwriting that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a

fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent

workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman."

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180, decided on 18.04.1968** wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were

reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequittor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed**. Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
*Presiding Judge,
 Industrial Tribunal-cum-
 Labour Court, Shimla.*

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
 TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	283 of 2021
Instituted on	:	14-12-2021
Decided on	:	01-03-2023

Gulzaro w/o Shri Hamid, r/o Village Majra, P.O. Baruna, Tehsil Nalagarh, District Solan,
 H.P. .Petitioner.

VERSUS

1. The Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P.
2. M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III), Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. through its Managing Director .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner	:	Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, AR
For the Respondent	:	Sh. Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 05.06.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, as under:

“Whether the demand of Smt. Gulzaro w/o Shri Hamid, r/o Village Majra, P.O. Baruna, Tehsil Nalagarh, District Solan, H.P., for her reinstatement in service before

the management i.e. the Occupier/ Factory Manager, M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. after submitting her resignation as per clause-1 of the settlement dated 20.02.2020 arrived at u/s 18(1) of the Industrial Dispute Act, 1947 between the management of M/s Penguin Electronics Ltd., Nalagarh Bharatgarh Road, Village Sallewal, P.O. Bhatian, Tehsil Nalagarh, District Solan, H.P. and the representatives of the workers union and after receiving full and final amount of Rs. 2.00 Lac as per clause-2 of the said settlement, is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management?"

2. Material facts necessary for the disposal of present reference petition as described in the statement of claim are thus that the petitioner was engaged as a Technician with M/s Prithi Kitchen Appliances Pvt. Ltd. (Unit-III) Village Sallewal Bharatgarh Road, Tehsil Nalagarh (**hereinafter to be referred as M/s Prithi Kitchen**) since 2007 and remained as such till her illegal removal from the company on 15.02.2019. As a matter of record, M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. and the petitioner was pressurized by M/s Prithi Kitchen to apply for fresh recruitment with respondent and as such on 26.2.2019, the petitioner applied to the respondent company and remained as such, till she was illegally terminated by the respondent company (Penguin Electronics) on 20.02.2020 on the ground that the company is being closed. The very action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. The respondent management had forcibly and illegally obtained the signatures of the petitioner on some blank papers and thereafter started causing interference and hindrances in the joining of the duty by saying that there is no necessity, as the company is going to be closed. The petitioner had requested the respondent company to allow her to join her duties but to no avail. The termination of the petitioner from service without affording any opportunity and conducting any domestic enquiry is illegal and not sustainable in the eyes of law.

3. In the footnote of the petition, the following prayer clause has been appended, which reads as under:

"It is therefore prayed that this Hon'ble Court may kindly be pleased to declare the so called settlement, the coercive, resignation and termination null, void and inoperative by the respondent on 20.2.2020 and allow the petition of the petitioner /claimant thereby directing the respondent/management to reinstate the services of the claimant/petitioner in the respondent company with full back-wages, seniority and other consequential service benefits throughout with costs."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, full and final settlement arrived at between the parties, the petitioner had not approached the Court with clean hands, claim is bad in the eyes of law, not a legal reference, mis-joinder of necessary parties and the petitioner has tendered her resignation, which was duly accepted by the respondent and a sum of Rs. 2 lacs has been disbursed as full & final settlement amount to the petitioner.

5. On merits, it is submitted that the respondent company had purchased the plant and machines from its erstwhile previous owner M/s Prithi Kitchen. As per the agreement, the respondent was ready to retain the petitioner along-with other workers, in consequences of conciliation meetings held and settlement arrived between the respondent company and workers on 15.02.2019. As per the settlement, it was agreed upon that the workers who were interested to work shall resign from the previous company after receiving all the financial benefits and thereafter join the respondent company along-with other workers, as such, the petitioner had joined as a fresh recruit with the respondent company since 15.02.2019, after receiving full & final financial benefits

from the previous company i.e. M/s Prithi Kitchen. However, the workers who were not interested to work with the respondent company shall get three months' notice period wages, retrenchment benefits, as per section 25-F of the Act, gratuity and all the financial benefits, as are applicable to them at the time of full and final settlement. With the passage of time, the respondent company found it difficult to run the unit, as the situation deteriorated within no time and the production had gone down drastically. The respondent company offered its employees/workers to transfer some of them to some other unit but the petitioner was not ready and through their representatives recognized workers union (INTUC) represented by its office bearers under the guidelines of the Baba Hardeep Singh entered into a settlement with the authorized representatives of the respondent company on 20.02.2020. As per this settlement, the respondent company had agreed to pay the consolidate sum of ₹2,00,000/- (Two Lacs) to each and every worker. It is denied that the petitioner was, in any manner, forced to tender the resignation. It is also denied that the signatures of the petitioner on blank papers were obtained. In fact, the petitioner and other co-workers had voluntarily tendered their resignation as per the settlement dated 20.02.2020 and received the full & final financial dues as applicable to them as per the settlement. It is, therefore prayed, that the claim petition may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition. It is averred that the resignation was taken from the petitioner forcibly, illegally and also by misrepresentation of the true facts. It is denied that the present reference is not legal reference and the claim petition was filed beyond the terms of reference.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.9.2022, which reads as under:

1. **Whether the demand of the petitioner for her reinstatement in service before the management of respondent company after submitting her resignation as per settlement dated 20.02.2020 arrived at between the respondent management and petitioner union, after receiving full and final amount of Rs. 2 Lakh as per settlement, is improper and unjustified? If yes, what relief the petitioner is entitled to and its effect?** ..OPP.
2. **Whether the claim petition is neither competent nor maintainable in the present form, as alleged?** ..OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue no.1 No

Issue No.2 No

Relief Reference answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition.

12. In cross-examination, the petitioner had testified that initially she was engaged with M/s Prithi Kitchen. She further admitted that there was a union in the M/s Prithi Kitchen. She had feigned ignorance that M/s Prithi Kitchen was taken over by the M/s Penguin Electronics Ltd. She admitted that on the directions of the Hon'ble High Court, the matter was referred to the Labour Officer, where full & final settlement was paid by Prithi Kitchen. She again admitted to have joined as fresh hand with Penguin Ltd. She further admitted that she had not completed one year service with the Penguin Ltd. She again admitted that she was paid salary for no work. She feigned ignorance that the dispute was raised before the Labour Officer. She again admitted that a sum of ₹2,00,000/- (two lakhs) were paid by the Penguin Ltd. towards settlement. She denied that she tendered her resignation and received full and final settlement. She further denied that she tendered resignation out of her free will and volition. She had also denied that after receiving full & final settlement, she is not entitled for re-instatement.

13. To refute the allegations of the petitioner, the respondent had examined Shri Surender Singh Bisht, presently posted as Labour Officer, Baddi as (RW-1), who proved on record the settlement arrived at between the parties dated 20.02.2020 registered on 25.02.2020 (R-1) and settlement between the parties dated 15.02.2019 (R-2).

14. In cross-examination, he admitted that the worker is not a signatory to settlement (R-1). Volunteered that it was signed by their representatives. He further admitted that the settlement (R-2) was also signed by the union representatives.

15. Smt. Shalu Chandel, Manager (HR) of respondent company appeared into the witness box as (RW-2), who had tendered into evidence her sworn in affidavit (RW-2/A), wherein she also reiterated almost all the averments as made thereto in the reply. She also tendered into evidence the letter of appointment (R-3), payment voucher (R-4), registration letter (R-5), reply to demand notice (R-6) and letter Mark RX-1, on record.

16. In cross-examination, the respondent witness duly admitted that there was a business transfer agreement executed between the two giants i.e. M/s Prithi Kitchen and M/s Penguin Electronics Ltd., in the year 2019. She admitted that there was an ascertaining of these settlements arrived at before the Conciliation-cum-Labour Officer under section 12(3) and 18(1) were executed between the management and the workers representatives/union. She admitted that the workers are not a signatory to the aforesaid settlements. She denied that the respondent management had approached the Government for closure of the company under section 25-FFF of the Act, in the year 2020. She further denied that the resignation of the workers were obtained forcibly by the management and the workers union. She denied that the acceptance of the resignation was not conveyed to the workmen. Volunteered that the workers put their signatures on the payment voucher out of their free will and consent and again submitted resignation free and voluntarily made. She denied that the management had put the pressure on the workers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Ms. Neetu Sharma, Advocate and Shri J.C. Bhardwaj, Ld. Counsel and AR for the petitioner has contended with all vehemence that the settlement was neither signed by the workers personally nor they have authorized anyone to sign the settlement on their behalf in this regard. Since, there is no authorization as per the prescribed performa F has been proved by the respondent, hence, the settlement arrived at between the representatives of the workers and management is not a legal settlement executed between the parties. They further argued that the settlement has been signed between the management and some of the representatives namely Shri Mukesh and Shri Yashpal under section 18(1) of the Act, hence, this settlement is not at all binding on the petitioner and it is only applicable on the signatory of the settlement. The management of the respondent company has not produced the best evidence by not examining the signatories i.e. Shri Mukesh and Shri Yashpal to the settlement, which could go to show that under which capacity they have signed the settlement, hence, the settlement executed, if any, ultimately required to be set aside and quashed. She also argued that the settlement amount, if any, is proved against the workers, the same can be deducted at the rate of 25% per month from the salary of the workers. She argued that the payment of three months salary is required to be paid to each workmen as more than 100 workmen were working at the time of so called settlement. It is not at all understandable that why the respondent paid ₹2,00,000/- (two lakhs) to the petitioner without any valid conciliation effected interse the parties, which clearly shows that the respondent management had resorted to an unfair labour practice and victimization of the petitioner/workers. She argued that if the workers have submitted their resignation voluntarily then what would be the need for the settlement and with whom and why these settlements were not signed before the Labour-cum-Conciliation Officer. There is no acceptance of the resignation in these settlements. There is no proof placed on record that the settlement amount has been withdrawn by the workmen. It is argued that one hand the company is alleging the amicable settlement but in other hand tendering of resignation, therefore the present case is clear cut example of unfair labour practice as the resignation and settlements were arrived in the wake that the company is being closed. There is a bulk resignations obtained under section 25-FFF of the Act, however, the company is still in working condition, hence, the same amounts to an illegal retrenchment. They prayed that the petitioner be reinstated in service with all consequential service benefits including full back-wages in the interest of justice.

19. Ld. Counsel and AR for the petitioner also placed reliance on the case law **M/s Oswal Agro Ltd. Vs. Oswal Agro worker Union 2005 LLR 305 (SC) and Workmen of Minakshi Mill Vs. Minakshi Mill Ltd. And another 1992 LLR 481 (SC)**.

20. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the provisions of section 25-N of the Act would not be applicable in the present facts and circumstances of the case as the workers have not been in continuous service for not less than one year and they had not been retrenched by the respondent employer. It is not at all a case of retrenchment, rather he argued that it is the simplicitor case of tendering resignation out of free will and consent. After acceptance of the resignation a sum of ₹2,00,000/- (two lakhs) as per settlement has been paid to the petitioner. He further argued that it is quite apparent from the reference received from the appropriate government that each and every workers have been paid ₹2,00,000/- (two lakhs) settlement amount for less than one year of service. The documentary evidence filed by the respondent would clearly establish that it is a case of clear cut tendering of resignation and not retrenchment. It is settled law that once the resignation is tendered and the same has been accepted by the appropriate authority, thereafter the same cannot be withdrawn. It is not established on record that had it been a case of obtaining signatures on blank papers or tendering resignation forcibly then why the petitioner had remained slumbered over the matter for such a pretty long period, till the raising of the demand notice. Neither the petitioner reported the matter to the Police nor brought the same to the notice of the Labour Commissioner or the higher authorities. The plea of submitting bulk resignations is also not tenable. The entire case raised from the side of the petitioner is crystal clear from the tone and tenor of the reference itself that after submitting the

resignation and settlement arrived between the parties dated 20.02.2020 and after receiving full & final amount of ₹2,00,000/- (two lakhs) as per clause of the said agreement is proper and fair. Therefore, he prayed for the dismissal of the claim petition. He also placed reliance on the case law **Globe Ground India Employees Vs. Lufthansa German Airlines decided on 23.4.2019.**

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as a Technician with a erstwhile previous company i.e. M/s Prithi Kitchens. It is proved to the satisfaction of the Court that the petitioner had worked as such till 15.02.2019 and thereafter M/s Prithi Kitchen was taken over by the respondent company. It is an admitted case of both the parties that the petitioner was engaged as fresh hand/recruited with the respondent company on 26.02.2019 and had worked as such till 20.02.2020. It is alleged that the signatures of the petitioner were obtained on some blank papers, therefore the alleged resignation is nothing but has been obtained forcibly by the respondent. On the other hand, the respondent had asserted that as per agreement executed between the previous owner i.e. M/s Prithi Kitchen, the respondent was ready to retain the workers and engage them as fresh recruit/hands. The petitioner was engaged as fresh hand and worked as such for a period of approx. 9-10 months but she was not at all interested to work further, therefore, conciliation proceedings were held and settlement was arrived between the parties and full and final settlement amount was paid to the petitioner.

23. Admittedly, there were as many as two settlements arrived on record, firstly under section 12(3) (R-2) and under section 18(1) (R-1), which were produced on record. On behalf of the petitioner no documentary proof has been supplied on record. Both these settlements (R-1) and (R-2) produced on record were duly registered with the Labour Officer, as proved on record. Though, the petitioner had arrayed the previous company M/s Prithi Kitchens as one of the contesting respondent, but, Ld. Counsel for the petitioner vide separate statement stated at the bar that the petitioner do not want any substantive relief against the previous owner and thereby the petitioner had restricted his/her claim to the contesting respondent i.e. M/s Penguin Electronics. Similar is the situation arises from the reference received from the appropriate government. In the reference there is mention of the contesting respondent M/s Penguin Electronics only and M/s Prithi Kitchens is not a party to the reference received from the appropriate government. Moreso, vide separate statements Ld. Counsel/AR for the petitioner did not press the claim petition against the respondent M/s Prithi Kitchen Appliances Ltd. The statement is placed on record. As per the settlement arrived at between the parties, it is agreed upon that all the workers would get the retrenchment compensation along-with other benefits such as one month's salary, gratuity, leave encashment etc. It is also asserted that all the workers who are willing to do work will submit their resignation and will get all the financial benefits from the previous owner M/s Prithi Kitchen. Another settlement arrived at between the parties dated 20.02.2020 (R-1), which was executed between the respondent management and representatives of the workers union under the egis of INTUC President Shri Hardeep Baba whereby it was agreed that all the workers who are not willing to work shall tender their resignations which will be accepted by the respondent management and thereafter the respondent management shall pay full & final settlement amount to each and every worker. Here, I would like to reproduce settlement (R-1), which reads thus:

समझौता नामा

(जेरे धारा 18-1 औद्योगिक विवाद अधिनियम, 1947)

समझौता नामा आज दिनांक 20-2-2020 मुकाम गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में निम्नलिखित के मध्य हुआ:—

प्रबंधन पक्ष

कामगार पक्ष

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| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
| | 2. यश पाल |

विवाद का विस्तृत विवरण

यह कि प्रबंधन पक्ष की फैक्ट्री पेंगुइन इलैक्ट्रोनिक लिमिटेड, गांव सल्लेवाल, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश में स्थित है जहां पर मिक्सी बनाने का काम किया जाता है। प्रबंधन दूसरी कम्पनी जो कि Branded नाम से बाजार में है उनके लिए काम कर रहा है पिछले कुछ महीनों से उक्त कम्पनी की तरफ से कोई मांग न होने के कारण प्रबंधन के पास फैक्ट्री में कोई उत्पादन नहीं हो रहा है तथा कामगार व स्टाफ बिना कार्य के खाली बैठे हैं जिस पर प्रबंधन ने कामगार व स्टाफ की नौकरी को बचाये रखने के लिए कुछ एक कामगार व स्टाफ का तबादला सल्लेवाल से दमन किया लेकिन स्टाफ/कामगारों ने तबादला पत्र की प्राप्ति के बावजूद भी दमन में रिपोर्ट नहीं किया तथा प्रबंधन ने उनके खिलाफ अनुशासनात्मक कार्यवाही शुरू की।

समझौते की शर्तें:

आज दोनों पक्षों में माननीय हरदीप बाबा, प्रदेश अध्यक्ष INTUC हिमाचल प्रदेश के मध्यस्थता की वजह से यह समझौता बिना किसी दबाव के हो गया है जोकि निम्नलिखित शर्तों पर हुआ है:—

1. यह कि फैक्ट्री में कार्यरत तमाम कामगार अपने पद से त्याग पत्र दे देंगे जोकि प्रबंधन द्वारा स्वीकार किये जायेंगे।
2. यह कि कामगारों द्वारा त्यागपत्र देने के उपरान्त प्रबंधन उनका कुल चुकता हिसाब जिनमें BONUS, LEAVE ENCASHMENT, अब तक की सैलरी (20-02-2020) तथा विशेष सहायता राशि को मिला कर FULL AND FINAL के रूप में दो लाख का AMOUNT हर एक कामगार को अदा करेगा।
3. कामगारों द्वारा त्याग—पत्र दिये जाने व प्रबंधन द्वारा स्वीकार किये जाने तथा कुल चुकता हिसाब अदा करने के पश्चात् कामगारों का उनकी सेवाओं पर कोई अधिकार नहीं रहेगा तथा कामगार भविष्य में अपनी सेवाओं को लेकर किसी भी प्रकार का कोई भी विवाद प्रबंधन के खिलाफ नहीं करेंगे।
4. कामगार पक्ष द्वारा जो पत्र मांग—पत्र के रूप में श्रम अधिकारी बद्दी को दिनांक 27-01-2020 को दिया गया था तथा जिस पर समझौता वार्ता फेल हो गयी थी उस मांग—पत्र को भी कामगार पक्ष निरस्त करता है तथा कामगार पक्ष श्रम आयुक्त शिमला को पत्र द्वारा इस बारे में लिखेगा कि उनका प्रबंधन के साथ समझौता हो गया है। लिहाजा इस पत्र पर व Failure Report पर कोई आगामी कार्यवाही न की जाए।
5. यह समझौता नामा दोनों पक्षों द्वारा श्रम अधिकारी बद्दी के पास पंजीकृत करवाया जाएगा।

प्रबंधन पक्ष

कामगार पक्ष

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| 1. रमेश कुमार चंदेल | 1. मुकेश कुमार |
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गवाह

*Hardeep Singh Baba,
President, INTUC (H.P.).*

24. Hence, the Culling out of the aforesaid settlement arrived at between the parties under section 18(1) of the Act which has been executed between the parties to which the representative of the workmen as well as representatives of the management put their signatures and witnesses by INTUC President Shri Hardeep Baba. The aforesaid settlement was duly registered with the Labour Officer.

25. Before proceeding further, it is apposite to mention the relevant provisions of the Act. Therefore, I deem it proper to reproduce section 18 of the Act, which reads as under:

“Persons on whom settlements and awards are binding: (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

- (2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
- (3) A settlement arrived at in the course of conciliation Proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--
 - (a) all parties to the industrial dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] 8*[Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
 - (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
 - (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

26. It is crystal clear from the perusal of the aforesaid provision of law that once the settlement is arrived at between the parties otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Time and again it is argued that the said agreement was signed by one Shri Mukesh Kumar and Shri Yash Pal, who were not duly authorized by the petitioner, they were not examined. So far as concerning the settlement arrived at between the parties and bound on all the parties, it is settled proposition of law that settlement which was arrived at by an agreement between the company and its employees or workmen represented by their mazdoor/Trade Union only and it was arrived at otherwise than in the course of a conciliation proceeding. Accordingly, such bipartite settlement was binding in terms of section 18(1) of the Act. A settlement arrived at in the course of conciliation proceedings or otherwise than will be binding on all the workmen. The Court shall presume that the settlement arrived at otherwise than in the course of conciliation proceedings is just and fair. It becomes binding on all the parties and all the persons who have been subsequently effected by the said settlement in that establishment. I have

carefully scrutinized the settlement (P-1) and is of the considered opinion that the said settlement is fair and legal and there is no illegality in the same.

27. Next comes the incriminating piece of evidence i.e. resignation letter dated 21.02.2020 (R-5) produced from the side of the respondent whereby the petitioner in his/her own handwriting had written that he/she is not in position to continue further with the job and thereby tendered his/her resignation for acceptance. The resignation is free from any kind of internal or external pressure. The said resignation has duly been accepted by the respondent. Moreso, in the payment voucher (R-4), the petitioner had by making endorsement with his/her own hand writing that he/she had received full & final settlement amount of ₹2,00,000/- (two lakhs) and now nothing is due in her favour from the respondent company. Another limb of the argument advanced before me by the respondent that during the course of arguments, it is argued that the signatures of the petitioner were obtained on blank papers. It is also argued that some of the workers were asked to sign in the closed dark room. Though, this fact has neither been pleaded nor proved on record. The onus of proving the alleged fact lies on the shoulder of the petitioner. The petitioner has miserably failed to prove by leading cogent, clear and clinching evidence that her signatures were either obtained in a dark room or on blank papers. It is settled law that a fact pleaded and not proved and similarly a fact proved and not pleaded are of no consequences. Here, the situation is different as the obtaining of signatures on blank paper that is too in dark room is neither pleaded nor proved. Consequently, a plea which is neither pleaded nor proved assumes no significance in the eyes of law. Such a plea/contention raised at bar is devoid of force and not tenable under law. It is also argued that some of the workers are illiterate and not in position to evaluate the consequences of their signatures and so on. It is satisfactorily proved on record that the submission of resignation in her own handwriting would not tantamount to any kind of tantrum as contemplated before me by the Ld. Counsel for the petitioner by citing lot of excuses. To my mind all these pleas are not sustainable and merely proved to be lame excuses. I failed to understand that if it is so than what was the occasion for the petitioner not to raise her voice for obtaining signatures on the blank paper and that in the dark closed room. After the acceptance of the resignation, the petitioner was duly paid full & final settlement amount of ₹2,00,000/- (two lakhs) in terms of settlement arrived at between the parties (R-1), on record. As a matter of fact, the settlement arrived at between the parties (R-1), tendering of resignation (R-5) and its acceptance by the respondent management, payment of ₹2,00,000/- (two lakhs) by the respondent management as full and final settlement to the petitioner are from natural corollary of the sequence of events which clearly established that the petitioner who had worked with the respondent company for less than one year was paid full & final amount of ₹2,00,000/- (two lakhs) as compensation. The entire averments averred in the resignation dated 21.2.2020 (R-5), nowhere depicts that it is a case of forced resignation. The resignation tendered by the petitioner is out of her free will and volition.

28. Their Lordship of Hon'ble High Court of Bombay in a case titled as *Laffans India Pvt. Ltd. vs Pancham Singh Rawat and Another, decided on 30 August, 2002, with equivalent citation 2003 (96) FLR 310, 2002 (4) MHLJ 470*, held as hereunder:

“In my opinion, the award of the Labour Court cannot stand scrutiny even for a minute. No reasonable man could have come to the conclusion to which the Labour Court has come to, though the resignation letter was true and though the signature was admitted by the respondent workman and though he had received letter from the petitioner company that his resignation was accepted, it could be said that it was a forced resignation. It is a fact that from 17th December 1993 or from 22nd December 1993, the respondent workman at no point of time had complained to any authority under the law or to anyone including his union that he was forced to resign from employment or that he was forced to sign some blank papers and that such blank papers were used as his resignation letter. As rightly observed by the Labour Court in

its earlier part of the Award that even in the demand letter submitted by the respondent workman after a period of 15 months, he did not whisper that his resignation was a forced resignation. It is absolutely unbelievable that if a workman is forced to resign he would keep quiet for a period of 15 months and would not take any action of any nature to protest against the force used by the employer to obtain such resignation letter. The delay of 15 months in raising demand itself is a crucial factor to discard totally the false theory of the workman that he was forced to resign or that his signature was taken on the blank papers or that such papers are used as resignation letter. In spite of more than sufficient material and evidence on record and though the Labour Court was satisfied about the factual aspect of the resignation I fail to understand how in the subsequent paragraphs of the award, the Labour Court has changed its flow of the award and reasoning for an resignation and come to a conclusion that the resignation was a forced resignation merely because the name of the respondent workman was not in the FIR. The finding of the Labour Court, therefore, is totally baseless and perverse and the same deserves to be quashed and set aside. Since the respondent workman had voluntarily resigned, there was no question of holding any domestic enquiry to punish the delinquent workman. It was entirely for the employer to accept resignation to simply get rid of the workman to buy peace and to save from the cost of enquiry or to hold an enquiry and punish. No inference of any nature can be drawn from the fact that the resignation was accepted as a short cut. In my opinion, there is nothing wrong or illegal or improper on the part of any employer to let his workman resign and leave even after the charge of a misconduct to avoid litigation and to avoid any stigmatic order which would also be not in the interest of the workman. It is not compulsory for the employer to hold an enquiry and punish his employee if the latter peacefully and voluntarily leaves the employment. Often such short cuts are also beneficial for both. There was absolutely no valid ground and justification for the Labour Court to hold that the resignation was a forced one and therefore, amounted to illegal termination to granting an amount of Rs. 1,25,000/- as compensation in lieu of reinstatement. The Labour Court has rightly commented that the conduct of the workman was not like a man of ordinary prudence. Any man of ordinary prudence, even a peon like the respondent workman would raise an alarm or protest as soon as he had received a letter from respondent company that his resignation was accepted. He would have immediately approached some authority or his union or the Government labour officer to say that he had never resigned but his resignation was taken forcibly or that his signature was taken on blank papers. In spite of its correct appreciation of evidence by the Labour Court, I fail to understand how the Labour Court has in the later portion of its award accepted the theory of forced resignation. There is absolutely no merit in the case of the workman.”

29. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had submitted resignation voluntarily.

30. Moreso, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that resignation can be withdrawn at any time, the withdrawal of the resignation by the claimant is a valid and she continues to be in service of the management. In my opinion this argument is on the fact of it false since the resignation of the claimant dated 21.02.2020, was duly accepted on the same day and it has become final and it cannot be withdrawn on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **Raj Kumar Vs. UOI, AIR 1969 SC 180**, decided on 18.04.1968 wherein it was held that :

"when a person has tendered his resignation his services clearly stands terminated from the date on which the letter of resignation is accepted by the authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the person to withdraw his resignation after it was accepted by the authority."

31. I am also supported by Hon'ble High Court of Delhi in **Deepak Kumar Bali Vs. HMT, (2009) III LLJ**, wherein it has been held as under:

"the resignation letter was considered as not spontaneous. In the present case it is not in dispute that the job of the appellant was transferable. The appellant was transferred to Pinjore but refused to join the new station and instead made representations against the same. Since the appellant did not join there was no option left with the respondent management but to start disciplinary proceedings. A very important fact to be noted is that at no stage the appellant challenged the transfer order in any legal proceedings. At the stage when the disciplinary proceedings were reaching a conclusion against the appellant, the appellant in his wisdom thought it appropriate to resign and go out of service. It was the option with the appellant to either challenge the transfer order or to contest the disciplinary proceedings but instead of challenging the transfer order the chose to resign. His resignation was accepted as the management as the management also in its wisdom thought it appropriate to let go of him and all his dues were paid. The dues sent by the respondent Management were appropriated by the appellant. The appellant having appropriated the dues, thereafter sought to rake up the issue of the resignation being under duress or pressure."

32. I also placed reliance in **Gujarat State Road Transport Corporation Vs. Shankarbhai Maljibhai Sandhwa, 2006 LLR 281**, it was held that :

"the resignation after it is accepted again be withdrawn and once the resignation is accepted, no relationship of master and servant existed thereafter."

33. Similarly, reliance is placed on **Rukshana Eisa Vs. Union of India & Ors., 2008 LLR 86 of Bombay High Court**, wherein it was held that :

"after valid acceptance it is not permissible to withdraw ID No. 501/06 9/10 the resignation."

34. I am also fortified by the decision of the Hon'ble Gujarat High Court in **H.M.P Engineers Ltd. Fatehnagar Vs. R. Kashi Naidu, 2010 LLR 252**, wherein it is held that :

"once the workman voluntarily resigned on accepting voluntary Separation Scheme, and it being duly accepted, he cannot later on withdraw his option."

35. For the foregoing reasons, as a binding precedent as well the distinct facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner has voluntarily resigned from service and she has not been terminated illegally by the management. The plea taken from the side of the petitioner that she was forced to tender her resignation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Accordingly, this issue is answered in negative.

ISSUE NO. 2

36. In support of this issue no evidence has been led by the respondent, which could go to show that as to how the present claim petition is neither competent nor maintainable in the present

form especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

37. As a Sequitor, in view of my above discussion, evaluation and findings on issues no.1& 2, **the merits of the claim petition of the petitioner deserves dismissal and the same is hereby dismissed.** Consequently, the present reference is answered in negative as it is held that the workman/petitioner has voluntarily resigned from service and he/she has not been terminated illegally. He/she is not entitled for any sort of relief from this Court/Tribunal.

38. Let a copy of this award be sent to the appropriate Government for publication as per law. File be consigned to the record room after necessary compliance by Ahlmaid.

Ordered accordingly.

Announced in the open Court today this 1st day of March, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

CHANGE OF NAME

I, Amit Kumar s/o Rattan Lal, V.P.O. Bada, Sub-Tehsil Sullah, Distt. Kangra (H.P.) declare that my name wrongly mentioned as Sugreeb Pall in Parivar Register of Gram Panchayat Sihol. My correct name is Amit Kumar. Concerned note.

AMIT KUMAR
s/o Rattan Lal,
V.P.O. Bada,
Sub-Tehsil Sullah, Distt. Kangra (H.P.).

CHANGE OF NAME

I, Meera Devi w/o Sh. Naresh Kumar, r/o V.P.O. Khagal, Tehsil & Distt. Hamirpur (H.P.) declare that I have changed my name from Meera Devi to Sonu Devi for all purposes in future. Please note.

MEERA DEVI
w/o Sh. Naresh Kumar,
r/o V.P.O. Khagal,
Tehsil & Distt. Hamirpur (H.P.).

आवास विभाग

अधिसूचना

शिमला—171 002, 27 जुलाई, 2023

संख्या: एच0एस0जी0—बी(2)2 / 2021(रुल्स) सी0ओ0.—हिमाचल प्रदेश के राज्यपाल, भू—संपदा (विनियमन और विकास) अधिनियम, 2016 (2016 का अधिनियम संख्यांक 16) की धारा 28 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश भू—संपदा विनियमन प्राधिकरण और हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, हिमाचल प्रदेश भू—संपदा विनियमन प्राधिकरण (रेस) में कम्प्यूटर ऑपरेटर (ग्रुप—ग) के पद के लिए इस अधिसूचना से संलग्न उपाबन्ध—“क” के अनुसार वेतन और सेवा की अन्य निबंधन एवं शर्तें नियम बनाते हैं, अर्थात्:—

1. संक्षिप्त नाम और प्रारम्भ.—(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश भू—संपदा विनियमन प्राधिकरण, कम्प्यूटर ऑपरेटर, ग्रुप—ग, वेतन और सेवा की अन्य निबंधन एवं शर्तें नियम, 2023 है।

(2) ये नियम राजपत्र (ई—गजट), हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे।

आदेश द्वारा,

देवेश कुमार,
प्रधान सचिव (आवास)।

उपाबन्ध—“क”

हिमाचल प्रदेश भू—संपदा विनियमन प्राधिकरण में कम्प्यूटर ऑपरेटर (ग्रुप—ग), के पद के लिए वेतन और सेवा की अन्य निबंधन एवं शर्तें नियम

1. पद का नाम.—कम्प्यूटर ऑपरेटर
2. पद (पदों) की संख्या.—01 (एक)।
3. वर्गीकरण.—ग्रुप—ग
4. वेतनमान.—(i) नियमित पदधारी (पदधारियों) के लिए वेतनमान: हिमाचल प्रदेश सिविल सेवाएं (संशोधित वेतन) नियम, 2022 के अनुसार पद के समयमान (टाईम स्केल) के साथ संलग्न वेतनमान पे—मैट्रिक्स का लेवल—9.
(ii) संविदा पर नियुक्त कर्मचारी (कर्मचारियों) के लिए उपलब्धियां.—हिमाचल प्रदेश सिविल सेवाएं (संशोधित वेतन) नियम, 2022 के अनुसार तत्स्थानी (संबंधित) संवर्ग के पे—मैट्रिक्स के लागू स्तर के प्रथम कोष्ठ का 60 (साठ) प्रतिशत।
5. “चयन” पद अथवा “अचयन” पद.—अचयन
6. सीधी भर्ती के लिए आयु.—18 से 45 वर्षः

परन्तु सीधे भर्ती किए जाने वाले व्यक्तियों के लिए ऊपरी आयु सीमा, तदर्थ या संविदा के आधार पर नियुक्त किए गए व्यक्तियों सहित, पहले से ही सरकार की सेवा में रत अभ्यर्थियों को लागू नहीं होगी :

परन्तु यह और कि यदि तदर्थ या संविदा के आधार पर नियुक्त किया गया अभ्यर्थी इस रूप में नियुक्ति की तारीख को अधिक आयु का हो गया हो तो वह उसकी ऐसी तदर्थ या संविदा पर की गई नियुक्ति के कारण विहित आयु में शिथिलीकरण का पात्र नहीं होगा :

परन्तु यह और कि ऊपरी आयु सीमा में, अनुसूचित जातियों/अनुसूचित जन जातियों/अन्य पिछड़ा वर्गों और व्यक्तियों के अन्य प्रवर्गों के लिए, उस विस्तार तक शिथिलीकरण किया जाएगा जितना की हिमाचल प्रदेश सरकार के साधारण या विशेष आदेश (आदेशों) के अधीन अनुज्ञेय है :

परन्तु यह और भी कि समस्त पब्लिक सेक्टर, निगमों तथा स्वायत निकायों के कर्मचारियों को, जो ऐसे पब्लिक सेक्टर निगमों/स्वायत निकायों के प्रारम्भिक गठन के समय ऐसे पब्लिक सेक्टर, निगमों/स्वायत निकायों में आमेलन से पूर्व सरकारी कर्मचारी थे, सीधी भर्ती के लिए आयु सीमा में ऐसी ही रियायत अनुज्ञात की जाएगी जैसी सरकारी कर्मचारियों को अनुज्ञेय है, ऐसी रियायत, तथापि पब्लिक सेक्टर, निगमों/स्वायत निकायों द्वारा नियुक्त किए गए थे/किए गए हैं और उन पब्लिक सेक्टर निगमों/स्वायत निकायों के प्रारम्भिक गठन के पश्चात् ऐसे निगमों/स्वायत निकायों की सेवा में अन्तिम रूप से आमेलित किए गए हैं/किए गए थे।

टिप्पणी—सीधी भर्ती के लिए आयु सीमा की गणना उस वर्ष के प्रथम दिवस से की जाएगी जिसमें कि पद (पदों) को आवेदन आमन्त्रित करने के लिए, यथास्थिति, विज्ञापित किया गया है या नियोजनालयों को अधिसूचित किया गया है।

7. सीधे भर्ती किए जाने वाले व्यक्ति (व्यक्तियों) के लिए अपेक्षित न्यूनतम शैक्षिक और अन्य अर्हताएं—(क) शैक्षणिक अर्हता(ए): किसी मान्यता प्राप्त विश्वविद्यालय या हिमाचल प्रदेश सरकार/केन्द्रीय सरकार द्वारा सम्यक रूप से मान्यता प्राप्त किसी संस्थान से कम्प्यूटर एप्लिकेशन/सूचना प्रौद्योगिकी/कम्प्यूटर विज्ञान में स्नातक की उपाधि।

या

हिमाचल प्रदेश सरकार/केन्द्रीय सरकार द्वारा सम्यक रूप से मान्यता प्राप्त किसी बहुतकनीकी संस्थान से कम्प्यूटर विज्ञान/सूचना प्रौद्योगिकी में तीन वर्ष का डिप्लोमा।

या

किसी मान्यता प्राप्त विश्वविद्यालय से स्नातक की उपाधि; और किसी मान्यता प्राप्त विश्वविद्यालय से या हिमाचल प्रदेश सरकार / केन्द्रीय सरकार द्वारा सम्यक रूप से मान्यता प्राप्त किसी संस्थान से कम्प्यूटर एप्लिकेशन/कम्प्यूटर प्रोग्रामिंग में कम से कम एक वर्ष का डिप्लोमा।

या

डोएक सोसाइटी/एन.आई.ई.एल.आई.टी. से “ए” लेवल का पाठ्यक्रम (कोर्स) किया हो।

टिप्पणी—अभ्यर्थी कम्प्यूटर ऑपरेटर, ग्रुप-ग, के पद पर नियुक्ति के लिए तभी पात्र होगा/होगी, यदि उसने हिमाचल प्रदेश में अवस्थित किसी स्कूल/संस्थान से दसवीं और 10+2 की परीक्षा उत्तीर्ण की हो:

परन्तु यह शर्त हिमाचल प्रदेश के स्थायी निवासियों को लागू नहीं होगी।

(ख) वांछनीय अर्हता (ए).—हिमाचल प्रदेश की रुद्धियों रीतियों और बोलियों का ज्ञान और प्रदेश में विद्यमान विशिष्ट दशाओं में नियुक्ति के लिए उपयुक्तता।

8. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए विहित आयु और शैक्षिक अर्हताएं प्रोन्नत व्यक्तियों की दशा में लागू होगी या नहीं।—(क) आयु: लागू नहीं।

(ख) शैक्षणिक अर्हता(ए).— लागू नहीं

9. परिवीक्षा की अवधि, यदि कोई हो।—सीधी भर्ती:

(क) दो वर्ष, जिसका एक वर्ष से अनधिक ऐसी और अवधि के लिए विस्तार किया जा सकेगा, जैसा सक्षम प्राधिकारी विशेष परिस्थितियों में और कारणों को लिखित में अभिलिखित करके आदेश दे।

(ख) संविदा के आधार पर सेवाधृति के आधार पर नियुक्ति पर अधिवर्षिता के पश्चात् पुनर्नियोजन पर तथा आमेलन पर कोई परिवीक्षा नहीं होगी।

प्रोन्नति: लागू नहीं।

10. भर्ती की पद्धति : भर्ती सीधी होगी या प्रोन्नति/सैकण्डमैण्ट/स्थानान्तरण द्वारा और विभिन्न पद्धतियों द्वारा भरे जाने वाले पद (पदों) की प्रतिशतता।—शत-प्रतिशत सीधी भर्ती द्वारा यथास्थिति, नियमित आधार पर या संविदा के आधार पर भर्ती द्वारा।

11. प्रोन्नति/सैकण्डमैण्ट/स्थानान्तरण द्वारा भर्ती की दशा में वे श्रेणियां (ग्रेड) जिनसे प्रोन्नति/सैकण्डमैण्ट/स्थानान्तरण किया जाएगा।— लागू नहीं।

12. यदि विभागीय प्रोन्नति समिति विद्यमान हो तो उसकी संरचना।—विभागीय प्रोन्नति समिति:

(क) लागू नहीं

(ख) विभागीय स्थायीयकरण समिति।—जैसी सरकार द्वारा समय-समय पर गठित की जाए।

13. भर्ती करने में जिन परिस्थितियों में हिमाचल प्रदेश लोक सेवा आयोग से परामर्श किया जाएगा।—जैसा विधि द्वारा अपेक्षित हो।

14. सीधी भर्ती के लिए अनिवार्य अपेक्षा।—किसी सेवा या पद पर नियुक्ति के लिए अभ्यर्थी का भारत का नागरिक होना अनिवार्य है।

15. सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन।—सीधी भर्ती के मामले में पद पर नियुक्ति के लिए चयन लिखित परीक्षा के गुणागुण या व्यावहारिक परीक्षा या दक्षता परीक्षा या शारीरिक परीक्षण के आधार पर किया जाएगा जिसका स्तर/पाठ्यक्रम आदि, यथास्थिति, हिमाचल प्रदेश लोक सेवा आयोग/अन्य भर्ती अभिकरण/प्राधिकरण द्वारा अवधारित किया जाएगा।

15 क. संविदा नियुक्ति, द्वारा पद पर नियुक्ति के लिए चयन।—इन नियमों में किसी बात के होते हुए भी पद पर संविदा नियुक्तियां नीचे दिए गए निबन्धनों और शर्तों के अध्यधीन की जाएंगी :—

(I) संकल्पना:

(क) इस पॉलिसी के अधीन हिमाचल प्रदेश भू-संपदा विनियमन प्राधिकरण में कम्प्यूटर ऑपरेटर को संविदा के आधार पर प्रारम्भ में एक वर्ष के लिए लगाया जाएगा, जिसे वर्षानुवर्ष आधार पर बढ़ाया जा सकेगा :

परन्तु संविदा अवधि में वर्षानुवर्ष आधार पर विस्तारण /नवीकरण के लिए सम्बद्ध विभागाध्यक्ष यह प्रमाण-पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा और

आचरण वर्ष के दौरान संतोषजनक रहा है और केवल तभी उसकी संविदा की अवधि नवीकृत/विस्तारित की जाएगी।

- (ख) पद का हिमाचल प्रदेश लोक सेवा आयोग के कार्यक्षेत्र में आना: अध्यक्ष, हिमाचल प्रदेश भू-संपदा विनियमन प्राधिकरण पद को संविदा के आधार पर भरने के लिए सरकार का अनुमोदन प्राप्त करने के पश्चात् अध्येक्षा को सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश लोक सेवा आयोग के समक्ष रखेगा।
- (ग) चयन इन भर्ती और प्रोन्नति नियमों में विहित पात्रता शर्तों के अनुसार किया जाएगा।

(II) संविदात्मक उपलब्धियां:

संविदा के आधार पर नियुक्त कम्प्यूटर ऑपरेटर, को ₹ 21360/- की संविदात्मक रकम प्रतिमास संदत्त की जाएगी। (जो तत्स्थानी संवर्ग के पे-मैट्रिक्स के लागू लेवल के प्रथम कोष्ठ का 60 प्रतिशत होगी)।

(III) नियुक्ति/अनुशासन प्राधिकारी:

अध्यक्ष, हिमाचल प्रदेश भू-संपदा विनियमन प्राधिकरण नियुक्ति और अनुशासन प्राधिकारी होगा।

(IV) चयन प्रक्रिया:

संविदा नियुक्ति के मामले में पद पर नियुक्ति के लिए चयन लिखित परीक्षा के गुणागुण, या व्यावहारिक परीक्षा या दक्षता परीक्षा या शारीरिक परीक्षण के आधार पर किया जाएगा जिसका स्तर/पाठ्यक्रम आदि, यथास्थिति, हिमाचल प्रदेश लोक सेवा आयोग/अन्य भर्ती अभिकरण/प्राधिकरण द्वारा अवधारित किया जाएगा।

(V) संविदात्मक नियुक्तियों के लिए चयन समिति—जैसी सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश लोक सेवा आयोग द्वारा समय—समय पर गठित की जाए।

(VI) करार:

अभ्यर्थी को चयन के पश्चात् इन नियमों से संलग्न “परिशिष्ट-ख” के अनुसार करार हस्ताक्षरित करना होगा।

(VII) निबन्धन और शर्तें:

- (क) संविदा के आधार पर नियुक्त कम्प्यूटर ऑपरेटर, को ₹ 21360/- की नियत संविदात्मक रकम प्रतिमास संदत्त की जाएगी (जो तत्स्थानी संवर्ग के पे-मैट्रिक्स के लागू लेवल के प्रथम कोष्ठ का 60 प्रतिशत होगी)।
- (ख) संविदा पर नियुक्त व्यक्ति की सेवा पूर्णतया अस्थायी आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्यपालन/आचरण ठीक नहीं पाया जाता है तो नियुक्ति पर्यवसित (समाप्त) किए जाने के लिए दायी होगी। यदि संविदा पर नियुक्त व्यक्ति प्राधिकारी द्वारा जारी पर्यवसान (समापन) आदेश से संतुष्ट नहीं है तो वह उस तारीख, जिसको पर्यवसान (समापन) आदेश की प्रति उसे परिदत्त की गई है, से पैंतालीस दिन के भीतर अपील प्राधिकारी, जो नियुक्ति प्राधिकारी से उच्चतर पंवित का होगा, को अपील कर सकेगा।

(ग) संविदा पर नियुक्त व्यक्ति, एक कैलेण्डर वर्ष में, एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश, दस दिन के चिकित्सा अवकाश और पांच दिन के विशेष अवकाश का हकदार होगा/होगी। संविदा पर नियुक्त महिला को दो जीवित बच्चों तक एक सौ अस्सी दिन का प्रसूति अवकाश दिया जा सकेगा। संविदा पर नियुक्त महिला कर्मचारी पूरी सेवा के दौरान, गर्भपात हो जाने सहित गर्भपात कराने की दशा में, प्राधिकृत सरकारी चिकित्सा अधिकारी द्वारा जारी चिकित्सा प्रमाण—पत्र प्रस्तुत करने पर पैंतालीस दिन से अनधिक प्रसूति अवकाश (जीवित बच्चों की संख्या का विचार किए बिना) के लिए भी हकदार होगी। संविदा पर नियुक्त कर्मचारी चिकित्सा प्रतिपूर्ति और एल0टी0सी0 आदि के लिए हकदार नहीं होगा/होगी। संविदा पर नियुक्त व्यक्ति को उपरोक्त के सिवाय किसी अन्य प्रकार का कोई अवकाश अनुज्ञात नहीं होगा :

परन्तु अनुपभुक्त आकस्मिक अवकाश, चिकित्सा अवकाश और विशेष अवकाश एक कैलेण्डर वर्ष तक संचित किया जा सकेगा और आगामी कैलेण्डर वर्ष के लिए अग्रनीत नहीं किया जाएगा।

(घ) नियन्त्रक अधिकारी के अनुमोदन के बिना कर्तव्य (झूठी) से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यवसान (समापन) हो जाएगा। तथापि आपवादिक मामलों में जहां पर चिकित्सा आधार पर कर्तव्य से अनधिकृत अनुपस्थिति के हालात संविदा पर नियुक्त व्यक्ति के नियन्त्रण से बाहर हों तो उसके नियमितीकरण के मामले में विचार करते समय ऐसी अवधि अपवर्जित नहीं की जाएगी, किन्तु पदधारी को इस बाबत समय पर नियन्त्रक प्राधिकारी को सूचित करना होगा। तथापि संविदा पर नियुक्त व्यक्ति कर्तव्य से अनुपस्थिति की ऐसी अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा :

परन्तु उसे सरकार के प्रचलित अनुदेशों के अनुसार, चिकित्सा अधिकारी द्वारा जारी किए गए बीमारी/आरोग्य प्रमाण—पत्र को प्रस्तुत करना होगा।

(ङ) संविदा के आधार पर नियुक्त पदधारी जिसने तैनाती के एक स्थान पर तीन वर्ष का कार्यकाल पूर्ण कर लिया हो, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो।

(च) चयनित अभ्यर्थी को, राजपत्रित सरकारी कर्मचारी की दशा में, चिकित्सा बोर्ड द्वारा और अराजपत्रित सरकारी कर्मचारी की दशा में सरकारी चिकित्सा अधिकारी द्वारा जारी, अपना आरोग्य प्रमाण—पत्र प्रस्तुत करना होगा। उन महिला अभ्यर्थियों की दशा में, जिन्हें परिसंकटमय स्वरूप के कर्तव्यों को कार्यान्वित करने वाले पदों के विरुद्ध नियुक्त किया जाना है और यदि उन्हें प्रशिक्षण की अवधि को सेवा—शर्त के रूप में पूर्ण करना है तो ऐसी महिला अभ्यर्थी, जो परीक्षण के परिणामस्वरूप बारह सप्ताह या इससे अधिक समय से गर्भवती पाई जाती है, को अस्थायी रूप से अनुपयुक्त घोषित किया जाएगा और उसकी नियुक्ति को तब तक आस्थगित रखा जाएगा जब तक कि प्रसवावस्था समाप्त नहीं हो जाती है। ऐसी महिला अभ्यर्थी का प्रसवावस्था की तारीख से छः सप्ताह के पश्चात् चिकित्सा उपयुक्तता के लिए पुनः परीक्षण किया जाएगा, और यदि वह उपरोक्त यथा विनिर्दिष्ट प्राधिकारी से चिकित्सा आरोग्य प्रमाण—पत्र प्रस्तुत करने पर उपयुक्त पाई जाती है तो वह उसके लिए आरक्षित रखे गए पद पर नियुक्त की जा सकेगी।

(छ) संविदा पर नियुक्त व्यक्ति का, यदि अपने पदीय कर्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी कि नियमित प्रतिस्थानी पदधारी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी।

(ज) नियमित कर्मचारियों की दशा में यथा लागू सेवा नियमों जैसे एफ0 आर0—एस0 आर0, छुट्टी नियम, साधारण भविष्य निधि नियम, पेंशन नियम तथा आचरण नियम आदि के

उपबन्ध संविदा पर नियुक्त व्यक्तियों की दशा में लागू नहीं होंगे। संविदा पर नियुक्त व्यक्ति (व्यक्तियों) को कर्मचारी सामूहिक बीमा स्कीम के साथ-साथ ई.पी.एफ. / जी.पी.एफ. भी लागू नहीं होगा।

16. आरक्षण।—सेवा में नियुक्ति, हिमाचल प्रदेश सरकार द्वारा, समय-समय पर अनुसूचित जातियों/अनुसूचित जनजातियों/अन्य पिछड़े वर्गों और व्यक्तियों के अन्य प्रवर्गों के लिए सेवा में आरक्षण की बाबत जारी किए गए आदेशों के अधीन होगी।

17. विभागीय परीक्षा।—लागू नहीं

18. शिथिल करने की शक्ति।—जहां राज्य सरकार की यह राय हो कि ऐसा करना आवश्यक या समीचीन है, वहां वह, कारणों को लिखित में अभिलिखित करके और हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, आदेश द्वारा, इन नियमों के किसी/किन्हीं उपबन्ध (उपबन्धों) को किसी वर्ग या व्यक्ति (व्यक्तियों) के प्रवर्ग या पद (पदों) की बाबत, शिथिल कर सकेगी।

उपबन्ध—“ख”

कम्प्यूटर ऑपरेटर, ग्रुप—ग, और हिमाचल प्रदेश सरकार के मध्य अध्यक्ष हिमाचल प्रदेश भू—संपदा विनियमन प्राधिकरण (नियुक्ति प्राधिकारी का नाम) के माध्यम से निष्पादित की जाने वाली संविदा/करार का प्ररूप

यह करार श्री/ श्रीमती पुत्र/पुत्री श्री
 निवासी संविदा पर नियुक्त व्यक्ति (जिसे इसमें इसके पश्चात् प्रथम पक्षकार कहा गया है) और हिमाचल प्रदेश के राज्यपाल के मध्य अध्यक्ष हिमाचल प्रदेश भू—संपदा विनियमन प्राधिकरण (नियुक्ति प्राधिकारी का पदनाम) (जिसे इसके पश्चात् द्वितीय पक्षकार कहा गया है) के माध्यम से आज तारीख को किया गया।

द्वितीय पक्षकार ने उपरोक्त प्रथम पक्षकार को लगाया है और प्रथम पक्षकार ने कम्प्यूटर ऑपरेटर के रूप में संविदा आधार पर निम्नलिखित निबन्धन और शर्तों पर सेवा करने के लिए सहमति दी है:—

1. यह कि प्रथम पक्षकार कम्प्यूटर ऑपरेटर, के रूप मेंसे प्रारम्भ होने औरको समाप्त होने वाले दिन तक एक वर्ष की अवधि के लिए द्वितीय पक्षकार की सेवा में रहेगा। यह विनिर्दिष्ट रूप से उल्लिखित किया गया है और दोनों पक्षकारों द्वारा करार पाया गया है कि प्रथम पक्षकार की द्वितीय पक्षकार के साथ संविदा, आखिरी कार्य दिवस् अर्थात्को स्वयंसेव ही पर्यवसित (समाप्त) हो जाएगी तथा सूचना नोटिस आवश्यक नहीं होगा:

परन्तु संविदा अवधि में वर्षानुवर्ष आधार पर विस्तारण/नवीकरण के लिए सम्बद्ध विभागाध्यक्ष यह प्रमाण—पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा और आचरण उस वर्ष के दौरान संतोषजनक रहा है और केवल तभी उसकी संविदा की अवधि नवीकृत/विस्तारित की जाएगी।

2. प्रथम पक्षकार की संविदात्मक रकम ₹ 21360/- प्रतिमास होगी। [जो तत्त्वानी संवर्ग के पे—मैट्रिक्स के लागू लेवल के प्रथम कोष्ठ का 60(साठ) प्रतिशत होगी]।
3. संविदा पर नियुक्त व्यक्ति की सेवा पूर्णतया अस्थायी आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्यपालन/आचरण ठीक नहीं पाया जाता है तो नियुक्ति पर्यवसित (समाप्त) किए जाने के लिए दायी होगी। यदि संविदा पर नियुक्त व्यक्ति नियुक्ति प्राधिकारी द्वारा जारी पर्यवसान (समाप्त) आदेश से सन्तुष्ट नहीं है तो वह उस तारीख, जिसको पर्यवसान (समाप्त) आदेश की प्रति उसे परिदत्त की गई है, से पैंतालीस दिन के भीतर अपील प्राधिकारी, जो नियुक्ति प्राधिकारी से उच्चतर पंक्ति का होगा, को अपील कर सकेगा।

4. संविदा पर नियुक्त व्यक्ति एक कैलेण्डर वर्ष में एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश, दस दिन के चिकित्सा अवकाश और पांच दिन के विशेष अवकाश का हकदार होगा/होगी। संविदा पर नियुक्त महिला को दो जीवित बच्चों तक एक सौ अस्सी दिन का प्रसूति अवकाश दिया जा सकेगा। संविदा पर नियुक्त महिला कर्मचारी पूरी सेवा के दौरान, गर्भपात हो जाने सहित गर्भपात कराने की दशा में, प्राधिकृत चिकित्सा अधिकारी द्वारा जारी प्रमाण पत्र प्रस्तुत करने पर पैंतालीस दिन से अनधिक प्रसूति अवकाश (जीवित बच्चों की संख्या का विचार किए बिना) के लिए भी हकदार होगी। संविदा पर नियुक्त कर्मचारी चिकित्सा प्रतिपूर्ति और एल0टी0सी0 आदि के लिए हकदार नहीं होगा/होगी। संविदा पर नियुक्त व्यक्ति को उपरोक्त के सिवाय अन्य किसी प्रकार का कोई अवकाश अनुज्ञात नहीं होगा :

परन्तु अनुपभुक्त आकस्मिक अवकाश, चिकित्सा अवकाश और विशेष अवकाश एक कैलेण्डर वर्ष तक संचित किया जा सकेगा और आगामी कैलेण्डर वर्ष के लिए अग्रनीत नहीं किया जाएगा।

5. नियन्त्रक प्राधिकारी के अनुमोदन के बिना कर्तव्य (ड्यूटी) से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यवसान (समापन) हो जाएगा। तथापि आपवादिक मामलों में जहां पर चिकित्सा आधार पर कर्तव्य से अनधिकृत अनुपस्थिति के हालात संविदा पर नियुक्त व्यक्ति के नियन्त्रण से बाहर हों तो उसके नियमितीकरण के मामले में विचार करते समय ऐसी अवधि अपवर्जित नहीं की जाएगी, परन्तु पदधारी को इस बाबत समय पर नियन्त्रक प्राधिकारी को सूचित करना होगा। तथापि संविदा पर नियुक्त व्यक्ति कर्तव्य से अनुपस्थिति की ऐसी अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा:

परन्तु उसे सरकार के प्रचलित अनुदेशों के अनुसार, चिकित्सा अधिकारी द्वारा जारी किए गए बीमारी/आरोग्य प्रमाण—पत्र को प्रस्तुत करना होगा।

6. संविदा के आधार पर नियुक्त व्यक्ति जिसने तैनाती के स्थान पर तीन वर्ष का कार्यकाल पूर्ण कर लिया हो, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा/होगी, जहाँ भी प्रशासनिक आधारों पर अपेक्षित हो।
7. चयनित अभ्यर्थी को, राजपत्रित सरकारी कर्मचारी की दशा में, चिकित्सा बोर्ड द्वारा और अराजपत्रित सरकारी कर्मचारी की दशा में सरकारी चिकित्सा अधिकारी द्वारा जारी, अपना आरोग्य प्रमाण—पत्र प्रस्तुत करना होगा। उन महिला अभ्यर्थियों की दशा में, जिन्हें परिसंकटमय स्वरूप के कर्तव्यों को कार्यान्वित करने वाले पदों के विरुद्ध नियुक्त किया जाना है और यदि उन्हें प्रशिक्षण की अवधि को सेवा—शर्त के रूप में पूर्ण करना है तो ऐसी महिला अभ्यर्थी, जो परीक्षण के परिणामस्वरूप बारह सप्ताह या इससे अधिक समय से गर्भवती पाई जाती है, को अस्थायी रूप से अनुपयुक्त घोषित किया जाएगा और उसकी नियुक्ति को तब तक आस्थगित रखा जाएगा जब तक कि प्रसवावस्था समाप्त नहीं हो जाती है। ऐसी महिला अभ्यर्थी का प्रसवावस्था की तारीख से छः सप्ताह के पश्चात् चिकित्सा उपयुक्तता के लिए पुनः परीक्षण किया जाएगा, और यदि वह उपरोक्त यथा विनिर्दिष्ट प्राधिकारी से चिकित्सा आरोग्य प्रमाण—पत्र प्रस्तुत करने पर उपयुक्त पाई जाती है तो वह उसके लिए आरक्षित रखे गए पद पर नियुक्त की जा सकेगी।
8. संविदा पर नियुक्त व्यक्ति का यदि अपने पदीय कर्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी कि नियमित प्रतिस्थानी पदधारी को पद के वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी।
9. संविदा पर नियुक्त व्यक्ति (व्यक्तियों) को कर्मचारी सामूहिक बीमा योजना के साथ—साथ ई0पी0एफ0/जी0पी0एफ0 भी लागू नहीं होगा।

इसके साक्ष्यस्वरूप प्रथम पक्षकार और द्वितीय पक्षकार ने साक्षियों की उपस्थिति में इसमें सर्वप्रथम उल्लिखित तारीख मास और वर्ष को अपने—अपने हस्ताक्षर कर दिए हैं।

साक्षियों की उपस्थिति में:

1.....

.....

.....

(नाम व पूरा पता)

(प्रथम पक्षकार के हस्ताक्षर)

2.....

.....

.....

(नाम व पूरा पता)

(द्वितीय पक्षकार के हस्ताक्षर)

[Authoritative English Text of this department notification No. HSG-B(2)-2/2021, (Rules) C.O., dated 27th July, 2023 as required under clause (3) of Article 348 of the Constitution of India].

HOUSING DEPARTMENT

NOTIFICATION

Shimla-2, the 27th July, 2023

No. HSG-B(2)-2/2021(Rules) C.O.—In exercise of the powers conferred by section 28 of Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016), the Governor of Himachal Pradesh, in consultation with the Himachal Pradesh Real Estate Regulatory Authority and Himachal Pradesh Public Service Commission, is pleased to frame the salary and others terms and conditions of service rules of Computer Operator, (Group-C) in the Real Estate Regulatory Authority (RERA), Himachal Pradesh as per Annexure “A” attached to this notification, namely:—

1. Short title and commencement.— (1) These rules may be called the Himachal Pradesh, Real Estate Regulatory Authority, salary and other terms and conditions of service of Computer Operator, Group-C Rules, 2023.

(2) These rules shall come into force from the date of publication in the Rajpatra (e-Gazette), Himachal Pradesh.

By order

DEVESHE KUMAR,
Principal Secretary (Housing).

**SALARY AND OTHER TERMS AND CONDITIONS OF SERVICE RULES OF
COMPUTER OPERATOR (GROUP-C), IN THE HIMACHAL PRADESH
REAL ESTATE REGULATORY AUTHORITY**

1. Name of Post.—Computer Operator

2. Number of Post.—01 (one)

3. Classification.—Group-C

4. Scale of Pay.—(i) Pay-scale for regular incumbent(s): Level-9 of the pay matrix attached with time scale of the post, as per H.P. Civil Services (Revised Pay) Rules, 2022.

(ii) Emoluments for contract employee(s): 60% of the first cell of the applicable level of pay matrix of the corresponding cadre, as per H.P. Civil Services (Revised Pay) Rules, 2022.

5. Whether "Selection" Post-or "Non-Selection" Post.—Non- Selection

6. Age for direct recruitment .—Between 18 to 45 years:

Provided that the upper age limit for direct recruits will not be applicable to the candidates already in service of the Government including those who have been appointed on adhoc or on contract basis;

Provided further that if a candidate appointed on adhoc basis or on contract basis had become over-age on the date he/she was appointed as such he/she shall not be eligible for any relaxation in the prescribed age-limit by virtue of his/her such adhoc or contract appointment;

Provided further that upper age-limit is relaxable for Scheduled Castes/ Scheduled Tribes/ Other Backward Classes and Other categories of persons to the extent permissible under the general or special order(s) of the Himachal Pradesh Government;

Provided further that the employees of all the Public Sector Corporations and Autonomous Bodies who happened to be Government servants before absorption in Public Sector Corporations/ Autonomous Bodies at the time of initial constitutions of such Corporations/ Autonomous bodies shall be allowed age concession in direct recruitment as admissible to Government servants. This concession will not, however, be admissible to such staff of the Public Sector Corporations/ Autonomous Bodies who were / are subsequently appointed by such Corporations/ Autonomous Bodies and who are / were finally absorbed in the service of such Corporations/ Autonomous Bodies after initial constitution of the Public Sector Corporations/ Autonomous Bodies.

Note.—Age limit for direct recruitment will be reckoned on the first day of the year in which the post(s) is/are advertised for inviting applications or notified to the Employment Exchanges, as the case may be.

7. Minimum educational and other qualifications required for direct recruit(s).—

(a) ESSENTIAL QUALIFICATION(S) : Should possess a Bachelor's Degree in Computer

Application/ Information Technology/Computer Science from a recognized University or from an Institution duly recognized by the Himachal Pradesh Government /Central Government.

OR

03 Years Diploma Course in Computer Science/Information Technology from a Polytechnic Institute duly recognized by the Himachal Pradesh Government /Central Government.

OR

Bachelor's Degree from a recognized University; and Diploma of at least one year duration in Computer Application/Computer Programming from a recognized University or from an institute duly recognized by the Himachal Pradesh Government /Central Govt.

OR

"A" Level Course in Computer from DOEACC Society / NIELIT.

Note.—A candidate shall be eligible for appointment to the post of Computer Operator Group-C, if he/she has passed matriculation and 10+2 from any School/Institution situated within Himachal Pradesh:

Provided that this condition shall not apply to Bonafide Himachalis.

- (b) **Desirable Qualification (s).**—Knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Prades.

8. Whether age and educational qualification(s) prescribed for direct recruit(s) will apply in the case of promotee (s):—*Age:* Not applicable.

Educational qualification: Not applicable.

9. Period of probation, if any.—Direct Recruitment

- (a) Two years subject to such further extension for a period not exceeding one year as may be ordered by the competent authority in special circumstances and reasons to be recorded in writing.
- (b) No probation in case of appointment on contract basis, tenure basis, re-employment after superannuation and absorption.

Promotion.— Not applicable

10. Method(s) of recruitment, whether by direct recruitment or by promotion/secondment/transfer and the percentage of post(s) to be filled in by various methods.—100% by direct recruitment on a regular basis or by recruitment on contract basis, as the case may be.

11. In case of recruitment by promotion/secondment/transfer, grade for which promotion /secondment /transfer is to be made.— Not applicable.

12. If a Departmental Promotion /Confirmation Committee exists, what is its composition.—(a) *Departmental Promotion Committee* : Not applicable.

(b) **Departmental Confirmation Committee** : As may be constituted by the Government from time to time.

13. Circumstances under which the Himachal Pradesh Public Service Commission (HPPSC) is to be consulted in making recruitment.—As required under the law.

14. Essential requirement for a direct recruitment.—A candidate for appointment to any service or post must be a citizen of India.

15. Selection for appointment to the post by direct recruitment.—Selection for appointment to the post in case of direct recruitment shall be made on the basis of merit of written examination and/ or practical test or skill test or physical test, the standard syllabus, etc. of which, will be determined by the Himachal Pradesh Public Service Commission/ other recruiting agency/authority, as the case may be.

15-A. Selection for appointment to the post by Contract appointment.—Notwithstanding anything contained in these Rules, contract appointments to the post will be made subject to the terms and conditions given below:—

(I) CONCEPT :

(a) Under this policy, the Computer Operator in the Himachal Pradesh, Real Estate Regulatory Authority will be engaged on contract basis initially for one year, which may be extendable on year to year basis:

Provided that for further extension/ renewal of contract period on year to year basis the Chairperson, Himachal Pradesh Real Estate Regulatory Authority, shall issue a certificate that the service and conduct of the contract appointee is satisfactory during the year and only then the period of contract is to be renewed / extended.

(b) **POST FALLS WITHIN THE PURVIEW OF HPPSC:** The Chairperson, Himachal Pradesh, Real Estate Regulatory Authority after obtaining the approval of the State Government to fill up the vacant post(s) on contract basis will place the requisition with the concerned recruiting agency *i.e.* Himachal Pradesh Public Service Commission.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these Rules.

(II) CONTRACTUAL EMOLUMENTS:

The Computer Operator appointed on contract basis will be paid consolidated fixed amount @ Rs. 21,360/-P.M. (which shall be 60% of the first cell of the applicable level of pay matrix of corresponding cadre).

(III) APPOINTING/DISCIPLINARY AUTHORITY:

(IV)The Chairperson, Himachal Pradesh Real Estate Regulatory Authority will be appointing and disciplinary authority.

SELECTION PROCESS:

Selection for appointment to the post in the case of contract appointment shall be made on the basis of merit of written examination and/or practical test or skill test or physical test, the standard/ syllabus, etc. of which, will be determined by the Himachal Pradesh Public Service Commission/ other recruiting agency/ authority, as the case may be.

(V) COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTMENTS:

As may be constituted by the concerned recruiting agency *i.e* Himachal Pradesh Public Service Commission from time to time.

(VI) AGREEMENT:

After selection of a candidate, he/she shall sign an agreement as per “Annexure-B” appended to these Rules.

(VII) TERMS AND CONDITIONS:

- (a) The contract appointee will be paid consolidated fixed contractual amount @ ₹ 21,360/-P.M. (which shall be 60% of the first cell of the applicable level of pay matrix of the corresponding cadre).
- (b) The service of the contract appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found satisfactory. In case the contract appointee is not satisfied with the termination orders issued by the Appointing Authority, he/she may prefer an appeal before the Appellate Authority who shall be higher in rank to the Appointing Authority, within a period of 45 days, from the date on which a copy of termination order is delivered to him/her.
- (c) The contract appointee will be entitled for one day's casual leave after putting one month's service, 10 days' medical leave and 5 days' special leave, in a calendar year. A female contract appointee with less than two surviving children may be granted maternity leave for 180 days. A female contract appointee shall also be entitled for maternity leave not exceeding 45 days (irrespective of the number of surviving children) during the entire service, in case of miscarriage including abortion, on production of medical certificate issued by the authorized Government Medical Officer. A contract employee shall not be entitled for Medical Re-imbursement and LTC etc. No leave of any other kind except above is admissible to the contract appointee.

Un-availed Casual Leave, Medical Leave and Special Leave can be accumulated upto the Calendar Year and will not be carried forward for the next Calendar Year.

- (d) Unauthorized absence from the duty without the approval of the controlling officer shall automatically lead to the termination of the contract. However, in exceptional cases where the circumstances for un-authorized absence from duty were beyond his/her control on medical grounds, such period shall not be excluded while considering his/her case for regularization but the incumbent shall have to intimate the controlling authority in this regard well in time. However, the contract appointee shall not be entitled for contractual amount for this period of absence from duty:
- Provided that he/she shall submit the certificate of illness/fitness issued by the Medical Officer, as per prevailing instructions of the Government.
- (e) An official appointed on contract basis, who has completed three years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.
- (f) Selected candidate will have to submit a certificate of his/her fitness issued by a Medical Board in the case of a Gazetted Government Servant and by Government Medical Officer in case of a Non-Gazetted Government Servant. In case of women candidates who are to be appointed against posts carrying hazardous nature of duties, and in case they have to complete a period of training as a condition of service, such woman candidate, who as a result of tests is found to be pregnant of 12(Twelve) weeks' standing or more shall be declared temporarily unfit and her appointment shall be held in abeyance until the confinement is over. Such woman candidate be re-examined for medical fitness six weeks after the date of confinement, and if she is found fit on production of medical fitness certificate from the authority as specified above, she may be appointed to the post kept reserved for her.
- (g) Contract Appointee will be entitled to TA/DA, if required to go on tour in connection with his/her official duties at the same rate as applicable to regular counterpart officials at the minimum of pay scale.
- (h) Provisions of service rules like FR SR, Leave Rules, GPF Rules, Pension Rules and Conduct Rules etc. as are applicable in case of regular employees will not be applicable in case of contract appointees. The employee's Group Insurance Scheme as well as EPF/GPF will also not be applicable to contract appointee(s).

16. Reservation.—The appointment to the service shall be subject to orders regarding reservation in the service for Scheduled Castes/ Scheduled Tribes/ Other Backward Classes/ Other categories of persons issued by the Himachal Pradesh Government from time to time.

17. Departmental Examination.—Not applicable.

18. Powers to relax.—Where the State Government is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and in consultation with the Himachal Pradesh Public Service Commission relax any of the provision (s) of these Rules with respect to any class or category of persons (s) or post(s).

ANNEXURE "B"**Form of contract/ agreement to be executed between the Computer Operator and the Government of Himachal Pradesh through the Chairperson, Himachal Pradesh Real Estate Regulatory Authority**

This Agreement is made on thisday ofin the yearbetween Sh./Smt.....s/o/d/o.....r/o..... Contract Appointee (hereinafter called the FIRST PARTY) AND the Governor Himachal Pradesh through Chairperson, Himachal Pradesh Real Estate Regulatory Authority. (hereinafter called the "SECOND PARTY")

Whereas, the SECOND PARTY has engaged the aforesaid FIRST PARTY and the FIRST PARTY has agreed to serve as a **Computer Operator** on contract basis on the following terms and conditions:—

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as a **Computer Operator** for a period of one year commencing on day of and ending on the day of It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall *ipso-facto* stand terminated on the last working day i.e. on and information notice shall not be necessary:

Provided that for further extension/ renewal of contract period the Chairperson, Himachal Pradesh Real Estate Regulatory Authority shall issue a certificate that the service and conduct of the Contract Appointee was satisfactory during the year and only then the period of contract is to be renewed /extended.

2. The contractual amount of the FIRST PARTY will be ₹ 21,360/-per month (which shall be 60% of the first cell of the applicable level of pay matrix of the corresponding cadre).
3. The services of contract appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance/ conduct of the Contract Appointee is not found satisfactory. In case the Contract Appointee is not satisfied with the termination orders issued by the Appointing Authority, he/she may prefer an appeal before the Appellate Authority who shall be higher in rank to the Appointing Authority, within a period of 45 days, from the date on which a copy of termination order is delivered to him/her.
4. The Contract Appointee will be entitled for one day's Casual Leave after putting one month service, 10 days medical leave and 5 days' special leave, in a calendar year. A female Contract Appointee with less than 2 surviving children may be granted maternity leave for 180 days. A female contract appointee shall also be entitled for maternity leave not exceeding 45 days (irrespective of the number of surviving children) during the entire service, in case of miscarriage including abortion, on production of medical certificate issued by the authorized Government Medical Officer. A contract employee shall not be entitled for Medical Re-imbursement and LTC etc. No leave of any other kind except above is admissible to the contract appointee.

Un-availed casual leave, medical leave and special leave can be accumulated upto the calendar year and will not be carried forward for the next calendar year.

5. Unauthorized absence from the duties without the approval of the Controlling Officer shall automatically lead to the termination of the contract. However, in exceptional cases where the circumstances for un-authorized absence from duty were beyond his/her control on medical grounds, such period shall not be excluded while considering his/her case for regularization but the incumbent shall have to intimate the controlling authority in this regard well in time. However, contract appointee shall not be entitled for contractual amount for this period of absence from duty:

Provided that he/she shall submit the certificate of illness/fitness issued by the Medical Officer, as per prevailing instructions of the State Government

6. An official appointed on contract basis who has completed three years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.
7. The selected candidate will have to submit a certificate of his/her fitness issued by a Medical Board in case of a Gazetted Government Servant and by Government Medical Officer in case of a Non-Gazetted Government servant. In case of women candidates who are to be appointed against posts carrying hazardous nature of duties, and in case they have to complete a period of training as a condition of service, such woman candidate, who as a result of tests is found to be pregnant of 12(Twelve) weeks standing or more shall be declared temporarily unfit and her appointment shall be held in abeyance until the confinement is over. Such woman candidate be re-examined for medical fitness six weeks after the date of confinement, and if she is found fit on production of medical fitness certificate from the authority as specified above, she may be appointed to the post kept reserved for her.
8. The Contract Appointee shall be entitled to TA/DA, if required to go on tour in connection with his/her official duties at the same rate as applicable to regular counterpart officials at the minimum of pay scale.
9. That the Employees Group Insurance Scheme as well as EPF/GPF will not be applicable to Contractual Appointee (s).

IN WITNESS the FIRST PARTY AND SECOND PARTY have herein to set their hands the day, month and year first above written.

IN THE PRESENCE OF WITNESSES:

1.....
2.....

(Name and full address)

(Signature of the FIRST PARTY)

1.....
2.....

(Name and full address)

(Signature of the SECOND PARTY)